Robert Morris
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17 Rail Road Ex.
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R. Morris

Robert Morris.
27 State Sheet
Boston.

Boston Journal

MONDAY EVENING FEB. 17, 1851.

☞ Boston—order-loving Boston—has become the theatre of strange scenes! A court-room entered by a mob of negroes—the ministers of the law overpowered—and a prisoner taken from the custody of the United States officers! Such was the scene which was witnessed in our city on Saturday afternoon! Such is the tale which the telegraph and the mails are now bearing to every city and village in the Union—exciting the indignation of every one who respects our legal tribunals, and who considers an *obedience to the laws* as the only safeguard against mob rule!

It cannot be contended by the negroes who committed this act, or by their white advisers, that there was any necessity for this summary proceeding.—The case had not been examined by the United States Commissioner. On the contrary, he had already given a liberal construction to the law, in favor of the prisoner, by according the able counsel who appeared in his behalf, until Tuesday, to prepare his defence. The liberty of the fugitive was in no immediate danger, neither had peaceable means been exhausted to secure his release. The act was committed in utter contempt for the law and for the Court which was charged with the execution of the law. It was an exemplification of the practical operation of "the higher law," which is taught by Charles Sumner, Wendell Phillips, William Lloyd Garrison, and others of the same school.

We take it for granted that every law-abiding and order-loving citizen of Boston, however much he may rejoice at the escape of the prisoner, will feel deeply mortified at the lawless means which were adopted to bring about the result. The law cannot be resisted and defied with impunity, and we trust that the instigators and executors of this bold outrage, so disgraceful to our city, will not go unpunished—that they will be identified, arrested and compelled to pay the heavy penalties to which they have rendered themselves liable. But even if the perpetrators of the outrage escape punishment, the mob spirit which has been aroused will find manifestation on other occasions and for other purposes, which some who are so ready to defend this act, may not be so willing to countenance. The mob has learnt its strength, and the next manifestation of its spirit, may be to aid the murderer to escape. The law-defiers have sown the wind; let them beware that they do not reap the whirlwind!

We are not disposed to charge this outrage upon the colored people of Boston, or even to suffer them to bear the odium of this lawless act. We know that a majority of our colored citizens are orderly and well disposed. Those who were engaged as aiders and abettors in this outrage, were acting under the advice of others who dared not themselves take an active part in the affair. They suffered themselves to be made the blind tools of parties who teach that no law is binding which does not receive the sanction of a man's own conscience.—When Charles Sumner declared in Faneuil Hall his belief that the Fugitive Slave Bill could not be executed in Boston—when he affirmed that there were many "who were ready to offer the fugitive the shelter of their houses, and if need be to *protect his liberty by force*,"—he incited this outrage. The chairman of the Faneuil Hall fugitive slave meeting, when he declared that "if the fugitive slave should kill the marshal who might come to arrest him, no Massachusetts jury would convict him of the murder"—also fired the blood of some of our colored population, and encouraged in them a spirit of resistance to the laws, even unto blood.—The Rev. Mr. Colver, when he offered a resolution that "*law or no law, constitution or no constitution*, the citizens of Boston pledge themselves to protect, at all hazards, the fugitive slaves who have taken shelter in their city"—also directly instigated the law-defying spirit which was manifested on Saturday.—The same remarks will apply to all the "higher law" orators from Charles Sumner down to William Lloyd Garrison, and there the responsibility of this outrage should be visited.

Since the above was written we have received a copy of the following handbill which was posted about the streets of the city yesterday (Sunday.) Comment is needless:

KIDNAPPERS DISAPPOINTED!

Shadrach, a waiter in the Cornhill Coffee House, was yesterday arrested as a Fugitive Slave, and taken before Geo. T. Curtis, Esq., on the complaint of John Kephart, of Norfolk, Virginia, in behalf of his pretended owner, John Debree, Purser in the U. S. Navy.

By a writ of Deliverance issued under the Higher Law, he was released from imprisonment in the U. S. Court Room, and is now enjoying his inalienable rights.

For full particulars see the Commonwealth Extra of this morning. For sale at 16 State street.

TAKE CARE OF THE KIDNAPPERS!!

BOSTON AND VICINITY.

THE FUGITIVE SLAVE WILKINS!

HIGH-HANDED AND MOST DISGRACEFUL OUTRAGE.

We announced in the one o'clock, P. M., edition of the *Journal*, on Saturday, the arrest in this city of the fugitive slave Wilkins, and in the three o'clock edition of the same afternoon, his rescue by a mob of law breakers. Since then, we have learned the following additional particulars relative to the affair:

It appears that the complaint against "Fred" *alias* "Shadrach" was made by John Kephart, attorney or agent of John DeBree, of Norfolk, Va., (the claimant of Shadrach) and sets forth that "Shadrach" escaped from him at Norfolk, on the third day of May, 1850. Mr. Kephart having all the required documents with him, arrived in this city last week, and made application to the U. S. Commissioner George T. Curtis, for a warrant for the arrest of the fugitive, agreeably to the provisions of the law of the land.

After due examination of the documents, the Commissioner issued the warrant as requested, and the same being placed in the hands of deputy U. S. Marshal John Riley, that officer, in company with deputy U. S. Marshal Frederick D. Byrnes, repaired on Saturday forenoon to the Cornhill Coffee House, kept by Mr. George Young, for the purpose of performing their duty by serving the warrant, and taking the person against whom it was issued, before the commissioner. The arrest was effected without any resistance on the part of the fugitive, and he was conducted into the United States Court Room.

The story of the arrest spread like wild-fire, and many colored people, together with a few whites, abolitionists and others, made their way to the Court room, which was soon densely filled.

Mr. Curtis, the Commissioner, soon appeared and took his seat upon the Bench. Seth J. Thomas, Esq., appeared as the empowered attorney, to prosecute Mr. De Bree's claim to the prisoner, and Messrs. Samuel E. Sewall, Ellis Gray Loring, Richard H. Dana, Jr., Charles G. Davis and Charles List., Esq'rs, volunteered their services as counsel for the defence, and requested a postponement of the examination on the ground that they required time to prepare for the defence.

Mr. Thomas stated that he was ready to proceed on the part of the claimant, and after a brief debate, the Commissioner decided that the examination should be postponed. Before adjourning, however, the documents brought by Mr. Kephart were read. These consisted of Mr. De Bree's original application before Richard H. Baker, a Judge of the Circuit Court of the United States at Norfolk, duly certified by John Williams, Clerk of said Court, that John De Bree is a citizen of Norfolk—that he made his claim before the Court, and that the signature to the application by Judge Baker, was genuine, &c.; also, the deposition of William Robertson, stating that he was knowing to the facts that Shadrach formerly belonged to a Mrs. Hutchins,—that he was subsequently sold at a Sheriff's sale to one John Higgins,—that the said Higgins afterwards sold the said Shadrach to John DeBree, and that he had heard the said Shadrach speak of the said DeBree as being his master. Also, the deposition of John Higgins stating the fact of his selling Shadrach to Mr. DeBree; and the deposition of William Marcus, stating that he had seen Shadrach in Boston, and that Shadrach had asked him to carry a letter for him, to a person in Virginia, at the same time telling him that he (Shadrach) had ran away from Mr. DeBree.

Upon the conclusion of the reading of these documents, the Commissioner adjourned the further hearing of the case, to Tuesday morning at 10 o'clock.

Deputy U. S. Marshal Patrick Riley then requested the spectators to retire, which they gradually did, until all, with the exception of the prisoner and his counsel, Mr. Riley and his assistants, (John Riley, Frederick D. Byrnes and his brother, Charles Sawin, Alonzo F. Neale, Simpson Clark,) Robert Morris, Jr., Elizur Wright, and a colored law student—had left the room, a large number of the colored people stopping in the passage-ways leading to the Court room.

Those remaining in the Court room were repeatedly and politely requested by Mr. Riley to leave the room, as the business of the Court was over, but they paid little attention to the request, excepting that two or three took their own time, one after another, in retiring. Mr. Neale informs us that Robert Morris, Jr., passed out and in the Court Room, three or four times, and was observed to chuckle and smile, as if something pleasing or funny was about to take place.

While all these matters were in progress, Mr. Ebenezer Noyes, messenger to the U. S. Court, upon the order of Deputy Marshal Riley, (Marshal Devens being absent at Washington) was busily engaged in endeavoring to procure city constables and police officers to repair to the U. S. Court room, in order to be in readiness to assist in suppressing an outbreak or disturbance, should their services be required for such purpose. These officers generally doubted their right to interfere in the matter, as they were in the service and employment of the city, and this case was a United States affair, in the hands of United States officers. They considered that none other than United States officers, and such as should be specially appointed by the U. S. Commissioner or Deputy U. S. Marshal, had the right to act in the matter, so long as the prisoner was in the custody of such officers on United States ground. Some of the city officers applied to, consulted legal counsel as to their power or right to act in the premises, and were advised not to act, and told that if they did act, they laid themselves liable to a severe penalty.

Under these circumstances, most of the city officers found excuse for not acceding to the request of Mr. Riley. Up to this time, no serious apprehensions of any trouble had been entertained by Mr. Riley, but it was thought advisable to send to the City Marshal, Francis Tukey, Esq., for some of his men to be in readiness to act at a moment's warning. The message was delivered by Deputy United States Marshal Warren, who was told in substance that no police officers were present, but as fast as they should come into the office, they should be sent out to protect the peace of the city. Before, however, Mr. Warren had fairly left the City Marshal's office, the fugitive had been forcibly taken from the Court room by the mob of law-breakers!

From the most reliable information we can obtain, it appears that just previous to the outbreak and rescue, Messrs. Wright and Morris (the others having previously left one by one) who had persisted in remaining in the Court-room, were ordered by Mr. Riley to leave, and upon their further refusal, Mr. Riley directed his assistants to put them out. This order was about being executed, when Mr. Noyes, the messenger, having occasion to enter the room, knocked at the door, which was carefully opened by Mr. Hutchins to admit him.

At the instant the key turned in the lock, some of those in the entry threw the door back, and seizing Mr. Hutchins, threw him violently to one side, and from twenty to twenty-five of the mob rushed into the Court room, towards the fugitive, who appeared much frightened and retreated to the back side of the room. He was followed up, seized, and hurried out of the Court room, down stairs, followed by the numbers who had remained all the while in the passage ways, and reaching Court street, was supported on each side by a stalwart negro, and borne rapidly along towards the West End, the crowd continually increasing, and loudly cheering. From Court street, the crowd rushed on down Cambridge street, up Butolph street, and through Southac street in the direction of the Mill Dam, where they were lost sight of by our informant.

So sudden, and on the part of Deputy Marshal Riley and his assistants so unexpected, was the attack and rescue, that it was utterly impossible for the officers, being unarmed, to make effectual resistance against such odds. Besides those who rushed into the Court room there were probably from one hundred to one hundred and fifty, at the least calculation, in the passage-ways, who evidently sympathized with the movements of the men who entered the Court room.

One of the negroes who entered the Court room seized the U. S. Marshal's sword from its place at the desk, and drawing it from the scabbard, passed out along with the crowd, but attempted no act of violence with the weapon. The sword was soon after recovered, it having been left in a store in Court Square.

The fact that it was the intention of Deputy Marshal Riley to keep the fugitive in the Court room until Tuesday, as the confinement in the Jail of a prisoner arrested under the fugitive slave process is forbidden by a law of the State, had been made known to the mob. It appears that Mr. Riley had despatched a messenger to Commodore Downs, at the Navy Yard in Charlestown, requesting permission to have the fugitive kept there until the day assigned for his examination. The Commodore returned an answer to the effect, that his correspondence with the Department did not justify him in assuming such a responsibility.

During the whole proceeding, there was but little unusual stir on the outside of the Court House, and in this connection, it should be stated that Marshal Tukey acting under the directions of the Mayor (and the Marshal is an officer who literally and promptly obeys his instructions) was prepared to maintain the peace of the city, had there been the least indication of any unusual disturbance in the street, but as there were no outward indications that trouble was brewing a moment before the rush from the interior of the Court House was made, he was not called upon to act.

Since the above was in type, we learn that when the fugitive reached the corner of Butolph and Cambridge streets he was hurried into one of Daley's cabs, but the crowd coming up surrounded the cab, breaking the windows and getting the door open, took him out and carried him along into Southac street, where he was secreted. During the evening he was placed in a covered wagon and conveyed out of the city.

The acting Marshal, Mr. Riley, has prepared a written statement of the transaction, which we shall publish in our afternoon editions.

A CARD.

I feel it my duty to notice publicly a deposition of the acting U. S. Marshal, which appeared in the morning papers.

On Saturday last, between the hours of 11 and 12 o'clk, Mr. Riley came to my office in the City Hall, and said to me—"We have got a negro, and I thought I would call and let you know." I received the information as a kindly hint to look out for street disturbances. He made no request whatever for assistance, nor did he intimate in any way that he wanted any, or that he had any apprehension of a rescue. After a few unimportant remarks he retired. I immediately sent for the Marshal, and directed him to preserve order around the Court House, to prevent obstructions to proper communication therewith, of course including (as all such orders do,) the protection of officers in charge of prisoners, while getting to or from the building. I remained in my office for an hour and a half, after giving these directions, but received no further communication on the subject from any one. The Police, within my knowledge, have never been called upon to attend the Courts of the State or United States, and, as I have already stated, no request was made to me for such assistance in the present case. Knowing that the Marshal of the United States has his own officers, and that he is authorised to appoint as many deputies, or call to his assistance as many individuals as the occasion may require—knowing, also, that the Sheriff, together with deputies and constables, are stationed in the Court House, I had not the shadow of suspicion that Mr. Riley was wanting in ample means to retain his prisoner against unarmed assailants.

Mr. Riley makes an ungenerous use of a casual remark which I intended for kindness. He was agitated: appeared to speak with great inconvenience to his lungs, and remarked that he had great difficulty in catching his breath. I answered that I was "sorry for him."

I annex a statement of the City Marshal.

JOHN P. BIGELOW.

City Hall, Feb. 17, 1851.

LETTER FROM THE CITY MARSHAL TO THE MAYOR.

Sir:—In answer to the communication of P. Riley, allow me to state, that on the 15th, at half-past 11 o'clock, A. M., he came into my office and said to me, "*We have got a nigger. I merely notify you, so that if they make trouble you may be about.*" These were his exact words, and *all he said.* I immediately consulted with you, and you directed me to prevent any breach of the peace outside of the Court House, and I took measures accordingly. I sent out officers from time to time to see that all was quiet.—At about 1 o'clock, P. M., Mr. Noyes came to my office, saying the U. S. Marshal wanted all the *spare* officers I had. I had none. I wanted all I had to execute your orders. At about 10 minutes to 2 o'clock, I sent an officer to the Court Room, and found the door taken care of; *and the officer I sent was denied admission*—the person having charge saying the U. S. Marshal told him to admit

no one. He returned. In a few moments afterwards another person came, and said that he was afraid the negroes would break open the Court room. I immediately started, but before I had got out of the City Hall, I learned the Fugitive had been rescued.

I learn, and believe it to be true, that Mr. Riley said he did not want any others than those he had employed, to remain in the court room, and added that, "*we can take care of the man,*" and also at the time the rush was made, he was walking backwards and forwards across the court room, and made no resistance whatever at the door, or as the negroes passed by him.

In conclusion, allow me respectfully to say that in the Ordinance creating the office of City Marshal, I do not find that he is to do the work of the United States Marshal; and if it is the wish of the City Government to have me do it, they have only to pass the order, *and I will arrest the Fugitives and keep them, or I will resign.*

Respectfully yours,
FRANCIS TUKEY,
City Marshal.

To Hon. JOHN P. BIGELOW, Mayor of Boston.
Feb'y 17th, 1851.

THE FUGITIVE SLAVE CASE.

AFFIDAVIT OF MR. RILEY, ACTING U. S. MARSHAL.

On the first page will be found a full and detailed account of the disgraceful outrage which occurred in our city on Saturday, in connection with which we now publish the affidavit alluded to at the close of the account on the outside:

COMMONWEALTH OF MASSACHUSETTS.
SUFFOLK COUNTY.

I, Patrick Riley, of Boston, in the said county, Counsellor at Law, having been duly sworn, depose and say, that I am, and have been, for fourteen years past, the principal deputy of the United States Marshal for the District of Massachusetts:—

That on Saturday morning, February 15th, 1851, about 20 minutes before 8 o'clock, A. M., I was called upon at my residence by Frederick Warren, one of the U. S. Deputy Marshals, who informed me that there was a negro man, an alleged fugitive, to be arrested at 8 o'clock, who was supposed to be at Taft's Cornhill Coffee House, near the Court House, and desired to know where the negro should be put in case he should be arrested before I reached the office—that I told him to place him in the United States Court Room—and that I would come to the office immediately,—that I came down almost immediately to the office, where I arrived shortly after 8 o'clock, and there found Mr. Warren, who informed me that the negro was unknown to Mr. Charles Sawin, Deputy Marshal, to whom the warrant was handed on the night previous, as I have been informed, though no notice of it had been given to any occupant of the Marshal's office—and that the negro was unknown to any one of the Marshal's Deputies or assistants—that Mr. Warren informed me that Mr. Sawin had gone to find the man, who by previous arrangement was to point out the negro, and who had not shown himself as agreed; that I remained in the Court House giving directions and making preparations to secure the negro when arrested, and awaiting the return of Mr. Sawin.

That I saw him after ten o'clock, and he informed me that he had seen the parties in interest, and that it had been arranged not to attempt the arrest until 11 o'clock—that I told him that it should not be delayed one moment, and directed him to notify the man who was to point him out to come instantly—that he left for that purpose, and at ten minutes before 11 returned, and said that the parties were about Taft's Coffee House, and that the men engaged were also in readiness in that neighborhood; that I went immediately with Mr. Warren, Mr. John H. Riley, and other deputies, to the said Coffee House, and there found all our men, nine in number, stationed in and about the place—that there were several negroes in and about the house, and I enquired for the man who was to point out the alleged fugitive, and was informed that he had not arrived—that Mr. Warren and myself went immediately into the dining hall at the Coffee House, and to avoid suspicion, ordered some coffee, and were waited upon by a negro, who subsequently proved to be the alleged fugitive—that, not hearing anything from our assistants, we took our coffee, and rose to go out and learn why we had not heard from them,—that the negro went before us to the bar-room, with the money to pay for the coffee, and in the passage between the bar-room and hall, Mr. Sawin and Mr. Byrne came up and each took the negro by an arm, and walked him out of the back passage way through a building between the Coffee House and the square beside the Court House to the Court Room as by me directed.

That I immediately, while he was entering the Court House, went to the office of the City Marshal, in the City Hall, in the same square with the Court House, and there saw Mr. Francis Tukey, the City Marshal, told him what had been done, and stated, as there would probably be a great crowd, his presence with the police would be needed to preserve order, and keep the peace in and about the Court House, which is owned by the city, and in which all the Courts of the Commonwealth for Suffolk county are held,—that Mr. Tukey stated that it should be attended to,—that I told him that I should notify the Mayor instantly, and proceeded up stairs to the Mayor's office where I found Hon. John P. Bigelow, Mayor of the city, and made the same communication and request to him which I had made to Mr. Tukey, to which the Mayor said —"Mr. Riley, I am sorry for it," that I then left the office, at which time it was just half-past 11 o'clock.

That I went immediately to the Court House, and found the negro in the United States Court room, with the officers, and found all the doors closed, and was admitted by the usual inside entrance,—that George T. Curtis Esq., the United States Commissioner, was called, and came, and the claimant's counsel were sent for,—that all the doors were kept closed excepting the usual entrance, which was kept guarded by officers,—that the Commissioner informed the fugitive, who was named "Shadrach" in the warrant, of the character of the business, and asked him if he wanted counsel, to which he said that he did, and that his friends had gone for counsel,—that while waiting for the counsel to come, the room began to be filled with negroes and whites,—that the counsel for the prisoner appeared, and claimed a delay, to give them an opportunity to consult with their client, pending which I desired Mr. Warren, the Deputy Marshal, to go to the Navy Yard at Charlestown, about two miles distant, and ask Commodore Downes whether, should a delay or adjournment take place, the Navy Yard might be used as a place of detention, the United States not being permitted by the law of the State to use the jails, and having none of their own.

That the examination proceeded, and after the reading of certain documents presented by the claimant's attorney, and some discussion, the Commissioner decided to grant the delay until Tuesday following, the 18th inst. That the counsel for the prisoner asked of the Commissioner if they might not remain and hold consultation with their client and examine with him the papers presented, to which the Commissioner assented,—that the court room was ordered to be cleared, and was cleared of all save some fifteen officers, being all the reliable men whom we had been able to collect, the counsel and some newspaper reporters,—that Mr. Warren, at this time, which was about half-past 12, returned from the Navy Yard, and informed me that he had seen Commodore Downes, who said he could not grant my request,—that I despatched what officers I could spare to ask such of their friends to remain as would assist, and to procure all the additional force possible, intending to use the Court House as a place of detention. That Mr. Curtis also left. That crowds of negroes and others began to gather about the court room and in the passage ways leading to the Court House,—that I went to one the messengers who had charge of the building, and desired him to have all the Court House doors closed as soon as possible which were not necessary for us.

That, at or before one o'clock, Mr. Ebenezer Noyes, the messenger of the United States Court, was despatched to the City Marshal, whom he informed that the United States Marshal wanted every man he could send to keep the peace in and about the Court House, to which the City Marshal replied that he had no men in, but would send them over as they came in. That at about two o'clk all the counsel had left, except Mr. Charles G. Davis and a reporter, who I learned was Elizur Wright, one of the editors of the Commonwealth newspaper; that as the door was opened for them to leave, which opened outwardly, the negroes without, who had filled the passage-way on the outside, took hold of the edges of the door as it opened, and then a struggle ensued between the holders of the door within, and those without. That Mr. Warren, the deputy, immediately ran to the City Marshal's office, but not finding him in went to the Mayor's office, and was informed that the Mayor had gone to dinner. That he then stated to those in his office, that there was a mob in and about the Court House, and called upon them to send men to help to disperse it. That he then returned to the City Marshal's office, found him in his private room, informed him of the trouble in the Court House, and asked him to send all the men he could furnish, and whether he (Mr. Warren) could aid him in getting his men, to which he said that Mr. Warren could not assist him in the matter.

That, meanwhile, the struggle at the door continued for some minutes, and the crowd of negroes finally succeeded in forcing the door wide open, rushed in in great numbers, overpowered all the officers, surrounded the negro, and he was forced by them through the door, down the stairs, and out of the side door of the court house, and thence through the streets to the section where most of the negroes of the city reside,—that officers were despatched in pursuit, but have not succeeded in finding his present abode.

That from the time of the first notice to the Mayor and City Marshal, immediately after the arrest, as heretofore stated, to the giving of this deposition, neither the Mayor nor the City Marshal has appeared, nor has a single officer under their direction appeared, or aided in attempting to disperse the mob, or in keeping the peace; and that, in my opinion, it was the predetermined purpose of both not to do their duty in keeping the peace in and about their Court House; for the City Marshal, when requested by Henry S. Hallett, Esq., to disperse a similar mob, which had collected about the office of his father, a United States Commissioner, during the excitement in the "Crafts" case, and that he had orders not to meddle in the matter, as I am informed by the said Hallett,—and that the City Marshal gave a similar answer to Watson Freeman, Esq., who asked him, at about the same time, why he did not disperse the mob, as I am informed by the said Freeman.

That Charles Devens, Jr., Esq., the United States Marshal for this district, was at the time of the arrest, returning from Washington, where he had gone on imperative official business—that it is proper to state here that neither the Marshal nor his Deputy is authorized by law to employ a permanent force sufficient to resist a mob; and that he has no authority to call to his aid the troops of the State or of the United States.

P. RILEY,
U. S. Deputy Marshal, Massachusetts District.

Commonwealth of Massachusetts, Suffolk County, February 17, 1851. Then personally appeared the above named Patrick Riley, and duly swore that the foregoing deposition by him subscribed is true, as to facts stated to be within his personal knowledge—and that he believes that the statements therein given as made to him by others are true.

HORATIO WOODMAN, Justice of the Peace.

P. S. We stop the press to announce that ELIZUR WRIGHT, one of the editors of the Commonwealth, and CHAS. G. DAVIS, have been arrested for aiding and abetting in the rescue of the fugitive.

They were released under bail in the sum of $3000 for their appearance for examination.

18.1

BOSTON AND VICINITY.

☞For other Local Matters see First Page.☜

[Reported for the Boston Journal.]

EXAMINATION OF ELIZUR WRIGHT,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT, FEB. 18—BEFORE MR. COMMISSIONER B. F. HALLETT.

The examination of Elizur Wright, one of the editors of the "Commonwealth," newspaper, for aiding in the escape of Frederick Wilkins, *alias* Shadrach, an alleged fugitive slave, on Saturday afternoon last, was commenced in the U. S. District Court room at 12 o'clock, M. to-day, before BENJAMIN F. HALLETT, Esq., United States Commissioner.

The following is a copy of the warrant upon which the defendants were arrested:

UNITED STATES OF AMERICA.

MASSACHUSETTS } ss.
DISTRICT }

To the MARSHAL of the District of MASSACHUSETTS, or either of his Deputies.

GREETING.

In the name of the President of the United States these are to command you, forwith to apprehend Elizur Wright, named in a complaint made on oath before me, this day, by George Lunt, if he may be found in said District, for aiding, abetting, and assisting one Shadrach, otherwise called Frederick, otherwise called Frederick Wilkins, a fugitive from service or labor, to escape from one John Cuphart, agent of John DeBree, claimant of said fugitive, as is more particularly set forth in said complaint, and bring him before me, in the U. S. Court Room, to answer to the said complaint and to be further dealt with thereon as the law directs.

HEREOF FAIL NOT, and make return of this warrant with your doings therein.

Given under my hand and seal, at Boston, this seventeenth day of February, in the year of our Lord one thousand eight hundred and fifty-one.

[Signed] B. F. HALLET,
Commissioner of the Circuit Court of the United States for the District of Massachusetts.

UNITED STATES OF AMERICA, }
Massachusetts District, ss. }

Boston, Feb. 17, 1851.

Pursuant hereunto, I have arrested the within named Wright, and now have him before the Commissioner within named, for examination.

[Signed] J. H. RILEY,
U. S. Deputy Marshal.

Before 12 o'clock, M. (the hour assigned for the examination to commence), the floor of the court-room was well filled, and the gallery was crowded, only a few colored men and some half dozen colored women being among the throng.

At six minutes past 12 o'clock Mr. Commissioner HALLETT, and Hon. GEORGE LUNT, U. S. Attorney for this District, came into the room, and the Commissioner took his seat on the bench.

Mr. LUNT cited the act under which the defendant (Mr. Wright) was arrested, and read the same to the Commissioner. It was under the last clause of the act, that the party had been arrested, and it would probably become necessary in the first place to establish the fact, that the party who had escaped, was a fugitive slave.

Mr. LUNT stated that he proposed to have the witness read certain documentary evidence of the identity of the party escaped, and with which he was perfectly familiar, they being the same as were read before another Commissioner on Saturday.

Mr. SEWALL raised the question of the admissibility of such documents as evidence in the case now before the Commissioner.

The Commissioner replied that his view was that the party escaped must be proved to have been a fugitive slave. The other point in the case was, whether the party was rescued from the custody of Mr. Cuphart, or from officers who were assisting Mr. C.

Mr. HILDRETH stated that Mr. Cuphart would have the same liberty to come into Court and claim him as a fugitive from service and labor, and without proving him such, was he to be answerable, or his friends for him, if he escaped by their aid.

The Commissioner replied that when that case should occur, and was brought before him to decide, he would give his opinion of the matter.

This case was now presented merely in the form of a preliminary inquiry, to see if there is sufficient evidence to hold the party to appear for trial.

Patrick Riley was the first witness called, and testified that he was one of the U. S. Marshal's deputies. Was present in the Court room on Saturday last, at the time of the rescue of a colored man named Shadrach. After the Court room was cleared, there remained as officers, Mr. Byrem, Sawin, J. H. Riley, Ebenezer Noyes, Isaac Hall, Bailey, Clark, E. J. and Wm. K. Jones, George J. Dexter, C. Hutchins, Chas. Flint of Reading, and others. These just named were engaged as officers. All these named remained. I never counted them, but there were fifteen or twenty present.

The counsel claimed the right to have a consultation with their client. Mr. Sewall and Mr. Loring also claimed the right to examine the papers which had been brought into the case. Some of the reporters of the press desired the privilege, and were permitted to examine the same papers. This was about 2 o'clock, and just about the same time as the reporters left, (a gentleman whom I did not know at the time) came in, but who I have since learned was Elizur Wright, the prisoner.

Mr. Wright shook hands with the prisoner (Shadrach) and said he had been a friend of the slave since '33 — Wright then asked him where his defences were. I remarked that I have no doubt that you can purchase the slave. I would give $25 and if necessary $50 for such a purpose. Wright exclaimed that he would sooner give $50 to buy pistols for him to defend himself. I told Mr. Wright that I should not allow such language to be used in the Court room, and ordered him to leave the room, and the officers to put him out.

He did not seem inclined to go, and it was owing only to the fact that I had so small a force present that he was not instantly ejected. In the meantime, I think, Mr. Sewall had left. At this time I heard quite a hurrah, and the officers at the door called for help. I was then standing by the prisoner, but immediately left him and rushed for the door. I looked back towards the prisoner and told him if he moved I would shoot him. He then dodged down under a table.

Mr. John H. Riley ran to the Marshal's desk and drew the sword from the scabbard, just at the instant the crowd broke in. He then laid the sword on a table and ran to one of the windows for the purpose of calling help from the outside. In less time than I can tell it, the fugitive was taken out. I was squeezed behind the green door. A colored man, whom I have since learned was Rev. Mr. Grimes, came in at the same time with Wright.

Cross Examined. My affidavit as published, contains a correct statement. There is nothing in that affidavit which I wish to alter, and nothing but what I re-affirm.— I have heard Mr. Wright spoken of as a reporter, and the first I knew of his being in the room was hearing Mr. Sewall call him Mr. Wright. I am positive that I heard Mr. Wright make the remark about purchasing the weapons or pistols, and I think Mr. Sewall, the gentleman before me, made a similar remark. I was a little angry with Mr. Wright at that time.

It was the remark made by him that caused me to order him out of the room. I ordered my assistants to remove Mr. Wright, and repeated the order three or four times. From his remarks, I was satisfied that Wright was not a proper person to be in the Court Room at that time. After the eruption, Wright was standing in the Jury seats, and I recognized him. I used no city constable in the arrest, unless Charles Sawin, who is a Deputy Marshal, is also a constable.

I have already named all whom I remember were in the room at the time of the rescue, and they consisted of Mr. Ebenezer Noyes, messenger, John H. Riley, Frederick D. Byrnes and Charles Sawin, Deputies, Mr. Simpson Clark, special officer, Mr. Calvin Hutchins, special officer. Dexter was not here on the inside.

Mr. Davis, Mr. Wright, and Mr. Grimes were about passing out of the door.

Those officers whom I have named were on the inside.

When I saw Mr. Wright after the crowd rushed in, he was doing nothing and said nothing that I saw or heard. Mr. Wright and Mr. Davis were about leaving at my request.

Frederick D. Byrnes, called and sworn. Am a deputy of the U. S. Marshal; was present in the Court House from about half-past 11 till the rescue. Saw Mr. Wright here, and knew him before that time. After the Court room was cleared, Mr. Wright and some others were here I should think about half an hour after the adjournment — Mr. Wright came in in a very abrupt manner, which caused Mr. Hutchins who was at the door to stop him.

I told Mr. Hutchins to admit him. Soon after he entered he had some conversation with Mr. Riley, and also with the prisoner, with whom he shook hands. I did not hear their conversation. I think all left except Mr. Davis and Mr. Wright, and the officers and prisoner. Mr. Wright continued in conversation with the fugitive. Mr. Wright, I think, went out once—I know he did—and remained, perhaps, five minutes.

2

When Mr. Wright was leaving finally, I had him by the arm. When we reached the door, Mr. Wright made a push against the door to open it wider than was necessary for him or us to go out. As he passed the threshhold Wright raised his arm, and exclaimed "Come in! now! now! come in now!!!" Those outside immediately rushed in.

We managed to close the green baize door once, but it was immediately opened again. The pannel door we were unable to close. After the baize door was closed. I heard voices outside say, "Go in! go in! take him away! take him away!!" At the time Wright raised his arm, I had hold of him, and felt the sensation of his voice when he made the exclamations as I have stated — I could *feel* that he was speaking.

This was at the very time I was going out with Wright, and the rush of the crowd. I saw Mr. Wright afterwards. During the trouble a blow was struck at me.— When the green baize door was forced open the second time, in come Mr. Wright again. He was the first man in.

At this time a very tall negro came in almost by the side of Mr. Wright, but we held the big nigger at bay a moment or two. I exclaimed "shoot that big nigger!"— Mr. Wright said "not in this Court room you don't." A gang of perhaps thirty or forty negroes were instantly in the room, and the fugitive was rescued.

Geo. T. Curtis called and sworn. Mr. Curtis testified that he issued a warrant on Friday for the arrest of Shadrach, and stated what proceedings were had before him in that matter. Witness also testified to the reception of the documents before alluded to.

These documents were handed to Mr. Sewall and have not yet been returned to witness. The documents were produced and identified by the witness. Mr. Curtis further testified that the only sign of any particular or special feeling was that one colored young man went to the rear of the fugitive's seat and said to him "we will stand by you."

Adjourned till 4 o'clock this afternoon.

[At this point, Mr. SEWALL stated that as the defendant totally denied the truth of the testimony of this witness, he moved that the other witnesses for the prosecution be excluded until they had testified.

The Commissioner replied that if the motion was granted, the witnesses for the defence should also be excluded.

MR. SEWALL claimed the right to have the witnesses for the defence remain and hear the testimony of those for the prosecution.

The Commissioner replied that if the counsel would show him the rule for adopting such a course, he would accede to the claim of the counsel for the defendants.]

[Reported for the Boston Journal.]

EXAMINATION OF ELIZUR WRIGHT,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

TUESDAY, FEBRUARY 18.

AFTERNOON SESSION.

Frederick D. Byrnes, cross-examined—Am 43 years of age; was born in England; came here in 1819—off and on I have resided in Boston 21 years. Since I have been here I have been in various employments. I first went to farming in East Bridgewater; next went to sea in the brig Vineyard, before the mast—was in that business a year or two; next I went into an iron foundry at Bridgewater, and continued there some time.

Commissioner—I should like to know for what object the counsel are endeaving to go into a biography of Mr. Byrne.

Mr. Sweall—We wish to trace his history, so that we may learn his character.

Mr. LUNT objected to the question of the opposite counsel as to the names of the Captains under whom the witness had sailed.

Mr. HILDRETH. We know the character of the witness has not recently been good, and we wish to see what it was at an earlier period.

Witness continued.—I have been in the employ of Cyrus Alger at South Boston; then went to Lowell as foreman in the cotton factory of Lyman, Rowstone & Boott; then went into a nail factory at Bridgewater, and hired the privilege there of putting up four or five machines. I then came to Boston in '38, '39 or '40, and bought out a grocery store of Mr. Reynolds. After being in that business about a year and a half I failed and went into bankruptcy. Soon after I was appointed a constable of the city, and remained so until during the administration of Mayor Davis, when I was turned out, and have not since been reappointed a constable. I am now a Deputy Marshal, and have been so one or two months. Could not say whether or not Mr. Wright had any conversation with the fugitive prior to the difficulty with Mr. Riley.

When Mr. Davis left the room I was at the door with him. At the same time I was with Wright and had one hand on his arm and the other on his back. When Wright was passing out, Davis stood partly against the wall, just outside of the door. Mr. Wright went out of the baize door so that it shut, and I should think that he must have gone out of the panel door, as when he came into the room again, the baize door shut to. Can't state how long Mr. Wright staid out. Can't say how many minutes. From the time Mr. Wright first came in until the rush, I should think it was half or three-quarters of an hour. At the time Wright was passing out, the panel door was pulled open by the blacks. Mr. Wright pushed against the door. I let Mr. Wright pass in, when the mob came in for the same reason that I let the rest in—because I couldn't keep them out. If Mr. Wright had been alone he couldn't have got in. I don't think he came back voluntarily. The mob crowded him along. He was so small they didn't find much trouble in pushing him along. The last I saw of Wright, he was standing near the door through which the mob entered. I think he run, but didn't see him.

After the fugitive escaped, I remained in the room a few minutes. Some of the officers were dispatched into the street, and I remained, thinking there might be an attack on the furniture. I afterwards went into the street, and might have stopped in at the Marshal's office as I went out. Mr. Davis left but a very few seconds before Mr. Wright. I thought Mr. Wright went rather slow, and I took hold of him to help him along. I think I could manage him with one hand. Think Mr. Sawin opened the baize door, but am not sure. I don't know why Mr. Wright raised his hand; he said nothing why he did. At the time Mr. Wright was going out, and after he raised his hand, I heard a loud hurrah! There is not much *before* or *after* to it; that is, at the opening of the panel door. The negroes took hold of the panel door at the moment Mr. Wright was going out. When I first saw the panel door, Mr. Hutchins had hold of the knob of the door. I did not push him out. If he had gone out the same as other gentlemen did, he would have gone well enough, as those men outside separated so as to give the gentlemen room to pass. I don't apprehend that Mr. Wright's pushing against the door had much to do with opening it.

Simpson Clark, called. I was in attendance in the Court room on Saturday. Am not a Deputy Marshal, but am in the employ of the Marshal. First saw Wright after the adjournment on Saturday. After he had been in the room a few moments, something was said by Mr. Wright, at which Mr. Riley said he could not suffer such language in the room, and requested him to go out. Mr. Wright said, in effect, that this was the U. S. Court room, and he had a right here, and should not leave until he got ready. Mr. Riley requested me to stand by the panel door to assist Mr. Hutchins in keeping the door fast. As I stood there, I think Mr. Davis passed out, and Mr. Wright coming close behind. As the door was opened to let them out, I saw the fingers of colored persons hold of the edge of the door, as if to pull it wide open. I held on as long as I could, but it was forced from me, when I sprang for the baize door and got hold of it, but my hold was soon loosened. At that moment I heard some one say "come in." I am confident it was Mr. Wright that said it, and thought so at the time. He was standing just inside at the side of the baize door. The crowd outside were hallooing, "go in! go in!" One man outside said, "knife him, knock him down!" I supposed they meant me, as I was endeavoring to keep the door closed.

Cross Examined. Had no means of telling the time; did not think of looking at the clock; can't say whether or not Mr. Wright went out after he first came in; he might have gone out and I not have seen him to notice him; when I saw the fingers on the edge of the door, I heard a shout; recollect of Wright and Davis going to the door, and thinking if they were out we should have the prisoner. I feel confident that I have stated the truth just as is; think I should know the difference between Shadrach and Mr. Wright, and don't think it was Shadrach that said "come in;" am confident it was Wright who used the expression. At the time the words "come in" were spoken, the burst was made. At the time the rush was made, and the baize door thrown back, I observed that Mr Riley was crowded back behind it.

At half-past 5 o'clock the court adjourned to meet again at ten o'clock to-morrow morning, when the examination will be continued.

3

[Reported for the Boston Journal.]

THE CASE OF THE FUGITIVE SHADRACH.

At 10 o'clock this morning, U. S. Commissioner Geo. T. Curtis took his seat in the U. S. Court room, agreeably to the adjournment of this case on Saturday. At twenty minutes past 10 o'clock Deputy U. S. Marshal Patrick Riley came in, and upon the Commissioner inquiring of him why the fugitive Shadrach was not present in accordance with his order, he read his "return," to which was annexed his affidavit, (which he also read) as already published, detailing the circumstances of the rescue of said Shadrach.

Mr. Sewall here attempted to make some statement, but was interrupted by the Commissioner, who stated that nothing could be heard from the party who had fled from the custody of the Court, and the process of the law.

Mr. Sewall claimed the right to appear in his (Shadrach's) behalf, and attempted to ridicule the return of the acting Marshal.

The Commissioner decided that he could not be further heard in that matter.

Mr. Thomas then enumerated the facts relative to the proceedings on Saturday.

He stated that he was in doubt as to the propriety of the Court hearing additional testimony which he could produce, but should, under the circumstances, await the decision of the Court as to the propriety of proceeding.

The Commissioner stated that he was not aware of any precedent, that would authorise him to proceed in the enquiry, but without looking for precedent, and guided by his own mind and opinion, he should order that no further proceedings under the complaint and warrant against Shadrach be had at present.

Mr. Sewall then moved that Shadrach be discharged from the warrant.

The Commissioner stated that he had already given his decision, and ordered the Marshal to adjourn the Court.

Previous to these proceedings, a posse of some twenty-five city watchmen who had been duly detailed and empowered for the purpose, were stationed in the Court room and passage-ways leading thereto, and during the proceedings we did not observe any colored persons in the building, with the exception of Robert Morris, Jr., and one other who was under arrest for aiding in the rescue and outrage on Saturday.

THE FUGITIVE SLAVE RESCUE:

A FIFTH ARREST FOR AIDING IN THE ESCAPE OF THE FUGITIVE SHADRACH.

Joseph K. Hayes, Superintendent of Tremont Temple, was arrested this forenoon, and brought into the United States Court-room during the examination of Mr. Davis, upon a charge of aiding and assisting in the escape and rescue of the fugitive Shadrach, on Saturday last. Mr. Hayes was placed at the bar in charge of special officers D. Cloutman and W. Griffith.

Mr. Commissioner Hallett read the complaint (made by Mr. Lunt) to the prisoner, to which he pleaded not guilty.

C. List Esq. appeared as counsel for the prisoner.

The prisoner was then ordered to recognize with sufficient surety in the sum of $3,000 for his appearance on Thursday next, at 10 o'clock, A. M. for examination.—William T. Davis became surety in the required amount, and the prisoner was released from custody.

A SIXTH ARREST.

Deputy U. S. Marshal John H. Riley, assisted by officer Sawin and several others, arrested a colored man named Alexander B. Burton, and charging him with participating in the riot on Saturday last. The prisoner is a barber by profession, and was at work in a shop near the railroad depot in Salem.

When he was first arrested, the cry was raised by his friends that he was a "fugitive," and a crowd of nearly three thousand persons assembled in the vicinity of the shop, and expressed their determination to rescue him from the officers. The Mayor called out the whole police force of the city, the sheriff, and the officers under him, to quiet any attempt that might be made towards a rescue. The prisoner was brought to this city in the 11 o'clock train of cars, and was taken to the U. S. District Court for examination. Several Salem officers accompanied the U. S. Deputy Marshal to this city.

Another Arrest for Aiding in the Outrage on Saturday. About ten o'clock this morning, Deputy U. S. Marshals John H. Riley, Byrne, and Sawin arrested a large, stout negro, named John Noye, upon similar process as that issued against Elizur Wright and Charles G. Davis, and for the same offence.

This arrest was soon spread on the wings of the wind, and a crowd collected, composed mostly of white persons, who appeared to be laboring men, having for the time being no particular business except loitering about the Court House, and gossiping in regard to the nature of the arrest. The story that he was a fugitive slave gained considerable currency, but when the fact that he was only arrested for aiding in the escape of a fugitive, became known, the crowd gradually separated, but quite a number continued in the square, their strength being replenished by new comers just about as fast as those who heard the story retired.

Mr. Commissioner Hallett read the complaint against Noye, to which he pleaded not guilty.

Messrs. William Hildreth and Samuel E. Sewall, Esqs appeared as counsel for Noye, and moved that the bail in this case be placed at a lower sum than in the case of the others.

Mr. Lunt replied that the prisoner was at the head of the gang who broke into the Court House on Saurday, and he saw no reason why the bail should not beat least as large as in the other cases.

Mr. Sewall urged that the amount of bail in the other cases should not be considered in this case; that the offence with which the defendant was charged, was nothing more than the larceny of property, and the bail ought not to be greater than in cases of larceny.

Mr. Lunt replied.

The Commissioner then ordered the prisoner to recognize in the sum of $3000 for his appearance for examination on Thursday next, the 20th inst., at 11 o'clock, A. M., and in default thereof to stand committed.

William W. Marjoram offered himself and was accepted as surety for the appearance of Noye at the above named time.

Action of the City Government to sustain the Majesty of the Laws. A meeting of the Mayor and Aldermen was held this forenoon, at which the following preamble and order were passed:

CITY OF BOSTON.

In Board of Mayor and Aldermen,
Tuesday, Feb. 18, 1851.

Wherens, This Board has learned with deep regret that the integrity of the laws and the dignity of the Commonwealth and city, have been greatly impaired by the forcible rescue and abduction of a prisoner from the hands of an officer of the United States, who had him in legal custody, therefore it is

Ordered, That the City Marshall, under the instructions of the Mayor, be directed, whenever he shall be properly informed by a public officer of this State, or the United States, that there is danger that he shall be unlawfully obstructed in the performance of his official duties by a mob, and that he needs his assistance,—immediately to repair to the place where it is apprehended said riot will be had, and there, faithfully and truly, with the whole police force under his control, use the same, in the most energetic manner possible, in support of the law, and the maintenance of the public peace.

CANTON HISTORICAL SOCIETY
COLLECTION 237
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INDEX

Complaint and warrant [illegible]

A PROCLAMATION BY THE PRESIDENT.

WASHINGTON, Feb. 18th, 1850.

The following proclamation by President Fillmore, has been officially announced:

"Whereas information has been received that sundry lawless persons, principally persons of color, combined and confederated together for the purpose of opposing by force the execution of the laws of the United States, did at Boston, Mass., on the 15th of this month make a violent assault on the Marshal or Deputy Marshal of the United States for the District of Massachusetts, in the Court House, and did overcome the said officers, and did by force take from their custody a person arrested as a fugitive slave, and then and there a prisoner lawfully holden by the Marshal or Deputy Marshal of the United States, and other scandalous outrages did commit in violation of law,

Now, therefore, to the end that the authority of the laws may be maintained, and those concerned in violating them brought to immediate and condign punishment, I have issued this my Proclamation, calling all well disposed citizens to the support of the laws of their country, and commanding all officers, civil and military, who shall be found in the vicinity of this outrage, to aid and assist, by all means in their power, in quelling this and other such combinations, and assisting the marshal and his deputies in recapturing the above named person; and I do especially direct that prosecutions be commenced against all persons who shall have made themselves aiders or abettors in this flagitious offence; and I do further command that the District Attorney of the United States and all other persons concerned in the administration or execution of the laws of the United States, cause the foregoing offenders, all such as aided, abetted, or assisted there, or shall be found to have harbored or concealed such fugitive, contrary to law, to be immediately arrested and proceeded with according to law.

Given under my hand and the seal of the United States, this 18th day of February, 1850.

[L. S.] MILLARD FILMORE.

DANIEL WEBSTER, *Secretary of State.*

[Reported for the Boston Journal.]

EXAMINATION OF ELIZUR WRIGHT,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

WEDNESDAY, FEB. 19.

MORNING SESSION.

[*See first page for yesterday afternoon's proceedings.*]

At ten o'clock, the Commissioner came in, and before commencing the examination of witnesses,

Mr. LUNT moved that the Proclamation of the President of the United States, published in the papers of this morning, be now read by the United States Marshal, in and before this Court.

Mr. SEWALL objected to the reading of the Proclamation, on the ground that it did not come before them in an authentic form, and that no one knew that it was authentic.

THE COMMISSIONER. The motion is deemed a very proper one, and I regret exceedingly that any citizen should treat a matter emenating from the highest officer in the Union with ridicule.

U. S. Marshal DEVENS then read the Proclamation of President Fillmore, after which the examination was resumed.

Calvin Hutchins called and sworn. Am a city watchman, was in attendance in this room on Saturday last, and saw the defendant here. The first that I saw of Mr. Wright, was at the door. I opened the panel door, for the purpose of letting persons in or out, as I had orders. Heard a rap on the door. Opened it and observed Mr. Wright and several other persons. Mr. Wright was very much agitated, and I stopped him. Passed the word in to Mr. Riley that a man was at the door, who wished to come in. Wright said he belonged to the press, and had a right in the room. Mr. Riley told me to let him in.—Wright came in, and passing across the room to Mr. Riley, had some words with him, and Mr. Riley ordered Wright to go out. Instead of going out, Wright went round and spoke to the prisoner. When he went out finally, there was no officer with him as I recollect. Mr Wright and Mr. Davis were standing close together, just outside of the door. Could not swear that I heard Wright say anything at the time the door was burst in. Some one said "come in," and others said "go in," but can't say from whom they came. At this time Wright was inside I think, because he had not time to get fairly out before the rush was made.

Cross Examination. Just as the rush was made I heard the outories. When Wright came in, he was much out of breath, and appeared as if he had been running. There had been other attempts to pull the door open, but none so violent as this. When Wright first came, I think he or some one else knocked at the door. Was not knocked down at the rush. Some blows were passed at me, and one man kicked me. Don't recollect of seeing Mr. Davis's face after the rush. While close by the door, Mr. Davis had some conversation with Mr. Byrnes. Wright first passed out, and then Davis—nearly together.

To the Commissioner—They passed out perhaps a minute before the rush. I held on to the knob of the panel door as long as I could. That door was probably open a foot wide. This was as Davis was passing out. He put his hand against the door and pushed against it, and others pulled and threw the door back, and I was thrown around with the door, and some passed directly in, and others were outside. I got hold of one man and held on to him some moments, until he got away. In the first place, I called for help; I saw the prisoner when he came out. Should think four or five had hold of him as he was rushed out; no one offered to aid me: don't think I saw Mr. Wright after the rush.

To Mr. Sewall—Saw Mr. Henry Homer on the stairs, just as I was crowded out.

Charles Savoin called and sworn—Am a Deputy Marshal of the United States. Have been a constable five or six years. Was in attendance on Saturday last. As I was standing near the fugitive, I heard some one outside say, "take him away, boys!" Also heard Mr. Wright say, "in! in!" I saw him as plain as I see him now. When I heard the cry, I went to the door to assist there.

Cross Examined—I now hold a constable's warrant.—Was left off for a time. Don't know as I am obliged to give the reasons why. Saw Mr. Wright in the crowd; he was among the *black* niggers. I did not see him *through* the *black* niggers, but over their heads. Am a native of South Natick. I never kept a gambling house or a bawdy house. There have been false representations concerning me, and I have proved them such.

THE COMMISSIONER—"This course of enquiry is decidedly improper."

Mr. HILDRETH—"If the United States are to have witnesses whose character cannot be enquired into, I shall look out for the future."

At the rush, the man nearest me was a big nigger, against whom I was crowding. Then there might have been one or two, or three small sized niggers and then Mr. Wright. I saw Wright over their heads, and behind him, the tall negro.

Mr. LUNT here proposed to rest the case for the prosecution for the present, believing that a sufficient case had been proved, to warrant the Commissioner to hold the defendant for trial.

Mr. SEWALL said that no evidence had been introduced to show that the person who had escaped was a fugitive from service or labor. Papers were produced, and proved, but were not read, and under these circumstances, he must move that Mr. Wright be immediately discharged.

THE COMMISSIONER replied by saying that he understood that those papers were put into the case. That on Saturday last, there was an alleged fugitive in this Court room, as was proved by Mr. Riley and other witnesses. That person had escaped, and the purpose in this case was to show the connection of the defendant with his escape.

Mr. SEWALL thought that the papers in question should be read, and then he would be ready to state his objections thereto. He urged that the prosecuting officer should fully establish the identity of the fugitive in question. He had not been identified, and no attempt had been made to establish his identity.

Mr. LUNT thought that enough had been proved for the purposes of this examination.

Mr. HILDRETH thought any person who might be arrested by mistake, might walk away or be aided in walking away, even with force. If the person arrested is the right man, the Marshal has a right to hold him, but if he makes a mistake and arrests the wrong man, that man has a right to resist and kill the Marshal and all his Deputies.

The COMMISSIONER—Mr. Hildreth, if you wish to argue any point of law, I will hear your argument, but this is not the place for an harangue.

Mr. HILDRETH—I stand corrected, but—

The COMMISSIONER. Mr. Sewall, the point I wish to draw your attention to—

Mr. HILDRETH—I wish to—

The COMMISSIONER—Keep your seat, sir! I am addressing myself now to Mr. Sewall, your colleague.

The Government is bound to show that the person arrested was the person named in the warrant, and that the person escaped was the person so arrested, and that the party now on examination did aid and assist in the escape and rescue of such person.

Whether the escaped party was, or was not a fugitive slave, is not the question now before the Court. If the person arrested was rescued, and did escape, and the defendant is proved to have aided and assisted in that rescue and escape, that constitutes the crime, as laid down in the law.

Mr. SEWALL thought that it was incumbent upon the District Attorney to prove that the man arrested was Shadrack, and not John Smith, and not so much that he was a fugitive from service or labor.

Mr. LUNT did not consider it of the least consequence whether the person who escaped was or was not a fugitive slave. That if the party is *alleged* to be a fugitive slave, and the person rescued or escaped is the person so alleged, and he has been rescued and escaped by the force and aid of others, is the only fact we are called upon at present to establish, together with that of the defendant being engaged in aiding and assisting such alleged person to escape.

Mr. HILDRETH said that if the person who was arrested here and escaped on Saturday, should prove to be some other person than Shadrach, that person had the right to escape, and to be aided in effecting his escape.

The Commissioner said he must be pardoned if he did not understand the law as presented by the junior counsel. The position laid down by the senior counsel, that the identity of the alleged fugitive should be established by the District Attorney, was a point which deserved consideration. He considered that the prosecuting officer should establish the fact, that the entry into the court room was for the object of rescuing the person alleged to be a fugitive slave, and the person named in the return of the Deputy Marshal as having escaped, was the person so rescued, and that the present defendant aided in the rescue of such person. If the object of the rush into the room was for some other purpose than the rescue of Shadrack, then the defendant was not answerable.

Patrick Riley, re-called—The colored person who was in custody in this room on Saturday, was the alleged fugitive whom I arrested as Shadrach, and is the same named in my warrant. When I arrested him, I asked him what his name was, and he replied that it was Frederick.

Mr. SEWALL again suggested that "those papers" be read.

The COMMISSIONER stated that the papers were already in the case. He regarded them simply as proof that some person had escaped from service and labor, and that the warrant showed that the person to be arrested was the person alleged to have escaped from such service, but, before his identity as that person had been fully established, he was rescued, and had escaped.

Mr. HILDRETH stated that he should expect to prove that from the time Mr. Wright first heard of the arrest of Shadrach, to the moment he entered the room, he had not sufficient time to act in concert with others outside, and hurried directly to the court room, which will account for his agitation.

The testimony for the government was closed at this point, and the witnesses for the defence were called.

TESTIMONY FOR THE DEFENCE.

Jamieson called and sworn—Between twelve and one o'clock, P. M., on Saturday last, saw Mr. Wright at the Adams House. He was there as one of a committee on paper. I told Mr. Wright personally that I had learned that a fugitive slave had been arrested. The meeting continued in session. Having business in State street, I came down and attended to my business, after which I came to the Court House. About half-past one o'clock, I saw Mr. Wright on the stairs leading to the Court room, and saw him enter the door. There was a large crowd in the entry and it was difficult to get either in or out.

Cross-examined. Mr. Wright said he was a reporter, and was admitted into the room; he spoke to no one about the door that I saw excepting to myself; he was in the entry about two minutes; when I saw him in the entry, he remarked that he could not leave the committee meeting any earlier. I remained in the entry perhaps fifteen minutes after he went into the room, and perhaps five minutes after he went in. There were but one or two persons whom I knew in the entry; one was Dr. Hanson or Hanscom, and the other was Mr. Grimes. I passed the time of day with Mr. Grimes, who was endeavoring to gain admission into the Court room.

Samuel Downer, Jr, called and sworn. Was present at the Adams House on Saturday last, at a meeting of the trustees of the "Commonwealth" newspaper. Some person who came in very near the close of the meeting and said, "they have got a fugitive slave in the District Court room." Think after I left the meeting, I came down with Dr. Howe, Dr. Stone, and a gentleman named Williams. The meeting had lasted several hours, and when it broke up, it must have been very near two o'clock. I did not come to the Court House at all, and I heard of the rescue of the slave while at dinner.

No cross-examination of this witness.

James W. Stone called and sworn. Was present at the meeting named by the two last witnesses; saw Mr. Wright there; he spoke in the meeting towards its close, which was nearly two o'clock. I came down in company with Mr. Downer as he has stated. I came to the Court House before the rescue, and just as I was entering, I met Mr. List, who spoke to me about the arrest. Mr. Jamieson told me himself at the meeting more than an hour before the meeting adjourned. He did not wish to have the arrest generally known, as it might cause the meeting to break up and adjourn.

Cross Examined. We kept the fact secret from the meeting, for fear the members of the committee would run away. I am a member of a committee to seek and give legal advice to fugitive slaves.

Charles G. Davis called and sworn. Was in this Court room on Saturday last. Think Mr. Wright came in about fifteen minutes before he went out. Am not personally acquainted with Mr. Wright. First saw him in conversation with Mr. Riley, who said that he had not seen the claimant, or had any conversation with him. That he thought perhaps the slave could be purchased, and he would be glad to give $25 for that purpose. Mr. Wright said he would rather give $50 to purchase Northern dough-faces, or persons who hunted slaves at the North, or something to that effect. I can't give his exact language. Mr. Riley then told Wright that he could not have such conversation in the court room, and ordered him once or twice to go out.

Both men seemed to be excited. Mr. Wright then spoke to the prisoner in a whisper. At this time the prisoner was seated at a table. A few moments after this, Mr. Riley said he should like to have us leave. Mr. List said that the counsel would like to have us remain until Mr. Dana came in, as he was expected in with a writ of *habeas corpus*, thinking that the prisoner could not be held under the evidence. I was very anxious to be present when Mr. Dana should come. Mr. Riley very kindly offered to give us the use of the Marshal's room or a lobby, where we could confer with Mr. Dana. I then turned round, and observed that Mr. Sewall had left; Mr. List also was gone. I then went out at the request of Mr. Riley.

To Mr. LUNT. Mr. Wright might have been within ten feet of me when I had a conversation with Mr. Byrnes, but I don't know where he was.

Mr. LUNT. "I object to this testimony." The Commissioner thought it might be admitted.

Mr. Byrnes said to me, "Mr. Davis I always had thought you were a gentleman, but I don't think so now."

I replied that I am sorry that you do not think me a gentleman, but I wa'nt you to understand my meaning. You talk about justice and fairness in a proceeding like this, and I told you that according to your code, if we all had justice, we should have our throats cut. I meant what I said and I mean so now.

We then bowed, and I started for the door. As I stepped out of the door I saw black fingers on the edge of it. After I got out there was quite a rush or crowd—a sort of push forward. It was closed so far as to be ajar for a moment or so. I rushed for down stairs. I managed to get down to the first landing, when I heard a tremendous yell, which resounded all over the Court House, and startled me very much. There were men rushing in past me, and some cried "come in!" "go in!" and heard a conflict up stairs. I was surprised to see such a motley group outside. The next I saw of Mr. Wright, was Saturday evening about 9 o'clock, when I was sent for. Such was the rush at the time I went out, that I did not look behind me, but judging from the rush past me as I was going down, and those that I saw, I should think there must have been a hundred or more.

When I was on the landing, I apprehended that there might be an attempt at rescue. I went down into my office across the Square, where I remained a minute or two, and upon coming out again I heard of the rescue.

To Mr. LUNT. It occurred to me during the forenoon of Saturday, that it was in the power of man to effect a rescue.

Mr. LUNT. "Was you present, Mr. Davis, at a late meeting in Faneuil Hall,' and appointed upon a committee?"

Witness. I was then at Syracuse, N. Y.

Mr. LUNT. Was you informed after your return that you were appointed on a committee chosen at that meeting?

Witness. I don't know that I was. I have volunteered to act as one of a committee of vigilance, and as legal advisers of fugitive slaves. I have attended meetings of committee, but don't know how that committee was raised, or that they did not appoint themselves.

After I left my office upon hearing of the rescue, I went up as far as Howard street, where I was told by Mr Whitwell, a constable, that the crowd were last seen in that street. Think I conversed about the rescue on Saturday afternoon with Mr. Sanger, and in the evening with Mr. Wright in the editorial chair in the sanctum or editorial-room. Think Mr. Hildreth was there.

I never have made it a matter of boasting that I assisted in getting that prisoner away; I never have taken any credit, if there be any credit, or any part of it; I never intended to boast of it; I don't wish to disguise the fact that I am glad the man is free.

Mr. COMMISSIONER. "Mr. witness, do you intend by that to say that you are glad he is free by the means which have been used according to law?"

Witness. "I mean to say I am glad of the fact."

The COMMISSIONER. "If you do not choose to answer my question Mr. witness, you will stop where you are. Such answers as you have made may tend to discredit your own testimony."

James W. Stone recalled. Mr. Wright acts as reporter for the "Commonwealth" newspaper. There are other reporters, and I report for that paper.

Adjourned to half-past 3 o'clock this afternoon.

BOSTON AND VICINITY.

[Reported for the Boston Journal.]

EXAMINATION OF ELIZUR WRIGHT,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

WEDNESDAY, Feb. 19.

AFTERNOON SESSION.

The Commissioner came in at 3½ o'clock, agreeably to the adjournment.

Mr. HILDRETH said, in relation to the point whether the Marshal, upon a warrant issued against A. B., could arrest any person other than A. B., the law is plain and clear that any warrant against a person conveys the authority upon the officer who serves the warrant, to execute such service upon no other person than the one named in the warrant. If the warrant is against John Brown, and the officer attempts to arrest me, the moment he lays his hand on my shoulder he does it at his peril.

The counsel proceeded to read from Roscoe's Criminal Evidence, and 4th Mass. Reports, decisions in support of his theory upon this point.

Another point in this case was, that the defendant is charged with aiding and assisting *in a rescue*. The first step to be taken was to prove that there *was* a rescue. It is admitted that a crowd of persons broke into the Court room, and the prisoner was carried off. A person was arrested; but, that that person was the one named in the warrant was not proved; and if there was a rescue, it must be proved that the person named in the warrant was the one rescued.

Mr. SEWALL then addressed the Court and said, one point in this case was, that somebody has been arrested, but it does not appear that it was the person named in the warrant upon which the arrest was made. The person arrested on that warrant has escaped. Not the slightest evidence had been produced that the person so arrested was the one named in the warrant. It was in the power of the District Attorney to produce such evidence, as John Cuphart, the claimant, had been here in Court, but he was no called upon the stand to testify to the identity of the person arrested.

The only fault that could be found with Mr. Wright and others, was he expression of their sentiments in regard to the fugitive slave law. Every citizen had the right to express his sentiments on a law so detestable.

It was the intention of the counsel to prove that, in the case of the defendant, it was impossible for him to have been engaged in any preconcerted scheme to accomplish the escape. At the time of the arrest, as is shown by the evidence, Mr. Wright was attending a meeting of several gentlemen at the Adams House. He was there informed of the arrest of a fugitive slave.

He evidently entered the court room without any concert with any parties outside. He had not time to have conversation with those outside of the door. He claimed the right, as a reporter, to come into the room, and by that right he was admitted. He came in to act as he was obliged to according to his business as a reporter. A reporter ought to be everywhere to obtain all the news, and publish the truth concerning the same. This was the object of Mr. Wright in coming into the room.

The first evidence against the defendant is, that he came into the room with Mr. Grimes, whose color is not much darker than his own. It does not appear that his coming in with Mr Grimes was not wholly accidental.—One witness, Mr. Jameson, thinks Mr. Grimes was in first.

The second charge against him is his conversation with Mr. Riley. That conversation shows strong feeling. The very freedom which Mr. Wright used on that occasion shows that he had no concerted action with any one. He spoke his opinions boldly, as every citizen has a right thus to speak.

In regard to the language used by Mr. Wright, in his conversation with Mr. Riley, there are several versions. In regard to his reluctance in going out, when ordered so to do, he was maintaining his sacred rights as a Reporter. He spoke to the prisoner, probably, to express his sympathy for him, as he had already said, according to Mr. Riley's testimony, that he had been the friend of the slave many years. Nothing had been shown that Mr. Wright had any plan, or had taken any part in the proceedings so far as related to the escape. The creditable part of the testimony shows nothing by which to infer that he did take part in it.

The evidence of Mr. Riley shows that Mr. Wright took no part in the attempt to rescue. Mr. Riley says that when the rush was made, Mr. Wright was standing in the jury seats some eight or ten feet from the door. He was properly there, doing his duty as a Reporter, looking on to see what was taking place. If he had been engaged in the rescue, he would have rushed in with the crowd towards the prisoner.

Mr. Clark corroborates Mr. Riley, by saying that he saw Mr. Wright standing by the door in the jury seats. This witness heard the expression, "Come in," and, turning his head, saw Mr. Wright. He did not know Mr. Wright's voice, as he was not acquainted with him; but he ascribed the sound to him. Even some of the other officers might have said, "Come in," not in addressing the crowd, but the officers at the door. If Mr. Wright had said, "Come in," would he not have said and done more? If he had any intention of assisting in the rescue, would he not have given more aid?

Mr. Byrnes's testimony was totally different in regard to this matter, and I am instructed to say, that his story is wholly false from beginning to end. I am sorry to say so, but am constrained to say it, heavy as the charge may be. He says Mr. Wright went out and returned before the final struggle. This in itself, is an unimportant matter, but it goes to the credibility of his testimony.

It is very clear that Mr. Wright did not go out, for Mr. Clark testifies that he did not see him go, and he (Mr. Clark) was at the door. If he had gone out and returned, it would have been impossible for him to have done so unless Mr. Clark had seen him.

Mr. Hutchins, another witness for the prosecution, who was more immediately the keeper of the door, did not see Mr. Wright go out. This falsification in Byrnes's testimony clearly shows his design.

Another charge against Mr. Wright was, that while in the Court room, and Mr. Byrnes said "shoot that big nigger," he (Mr. Wright) said "not in this Court room you don't." But this is not considered of much importance. Whether it was the best advice that could be given or not, it does not show that he had any hand in attempting to aid in the rescue.

The last scene, which Byrnes has colored so much, and which is utterly false and without the shadow of foundation, is, that he had hold of Mr. Wright's arm, with one hand upon his back, and heard him shout—"come in! now! now! come in now!" and that he raised his arm at the same moment, and the crowd rushed in; and also, that Mr. Wright was the first man in, and immediately upon holding up his hand the alarm was given. This is contradicted by Mr. Davis, and notwithstanding the position in which he is placed, his testimony no doubt will be credited. Mr. Davis went out, and Mr. Wright did not. He denies altogether having left the room.

Mr. Clark's testimony is sufficiently contradictory to that given by Mr. Byrnes. As Mr. Davis was passing out, he saw the fingers on the door, and then saw Mr. Wright coming towards the door, and he defended both doors as he stated in his testimony. He saw nothing of Wright or Byrnes in or at the door, and they could not have been there, as he sprung from one door to the other in order to keep them closed. Mr. Byrnes's whole testimony then, falls to the ground, and is not entitled to belief. His story is a manufactured one.

Next is Mr. Sawin, who does not agree with Mr. Byrnes in any particular. In the first place, he says he was standing inside of the baize door, pressing against it. At one time he says he saw a big nigger, as he expresses it, but afterwards the size becomes lessened, and he sees Mr. Wright behind two or three others, and yet Mr Byrnes says Wright was the first man in. Mr. Sawin is also contradicted by Mr. Clark and Deputy Riley. Pressing against the door, as Mr. Sawin says he was, he could not have seen Wright if he had been going out, neither could he have seen anything on the other side of the door. It seems that these statements are entirely inconsistent with each other.

We contend that Mr. Wright was in the room throughout the whole trouble, quietly looking on.

Mr. Hutchins represents Mr. Wright as going out before Mr. Davis, but does not recollect his coming back But there is no mistake that Mr. Wright did not go out of the room as is clearly proved by Mr. Davis, Mr. Clark and Mr. Riley.

Mr. SEWALL here rested his defence.

Mr LUNT arose and said that he did not consider it necessary to go minutely into the evidence of this case at this time, as he expected, and had the right to expect to be called upon at another time to examine more minutely the whole testimony. He therefore should be very brief.

It was not necessary for the prosecution to show any previous concerted action on the part of the defendant, whatever. All that was necessary for the prosecution was to show that there was a rescue, and that the defendant at the time, was so near that he could have had conversation with those engaged, and to show his acts. It was not necessary for the defendant, in order to become liable in this matter, to act by word or otherwise, a moment before the rescue was made.

It is to be presumed that we may take it for granted, that there are persons in this community, who are prepared, and who will aid and assist the fugitive to escape. The testimony of Mr. Commissioner Curtis shows that there are such; for he identified one man on Saturday, as going up to the prisoner and saying in a loud voice, "we'll stand by you"

From some cause, it has become necessary to place officers to guard the Court House.

Upon entering this Court room on Saturday, Mr. Wright immediately approaches the fugitive This is not all. Mr. Riley heard something which he said to the fugitive, and Mr. Davis says he (Wright) whispered to him. We all have the right to conjecture what he then said to him.

While Mr. Riley is making the proposition to purchase the slave. Mr. Wright says "he would sooner give $50 to buy pistols for him to defend himself," and immediately, upon approaching the fugitive, he says, "Where are your defences?"

We may go a little further, and inquire what is his general respect for the law? When ordered out of the room by an officer of the United States, he says he shall not go out until he is ready. This is the character of the gentleman who is so perfectly free from any intent of violating the law.

Upon the testimony of four witnesses, and having the spirit in his mind, he says "come in," or language to that purport, and by this language did invite the crowd to "come in."

A great effort has been made in regard to the testimony of Mr. Byrnes, and the prosecution had expected to see a host of witnesses arrayed against him, but his character remained unimpeached.

Mr. Clark, as honest a witness as ever took the stand, says he thought—

[Here the counsel for defendant made a remark in an under tone, at which the District Attorney said he did not know for what purpose the counsel chose to interrupt him with insolent remarks.]

Mr. Clark says he thought at the time, that it was Mr. Wright who said "come in." He thought so still, and upon further questioning he said he had not the slightest doubt of it.

Mr. Hutchins also heard the words "come in;" and was it to be supposed for a moment, that the officers uttered those words. There was no one in that part of the room who could have made that expression, unless we go upon the absurdity that the officers did it.

Mr. Sawin distinctly heard Mr. Wright say, "in! in!" this is the testimony.

[Here the learned gentleman read the provisions of the law relative to the present case.]

We have the testimony that he was unwilling to leave the Court room when requested by the officer.

Was his conduct, while in the room, towards Shadrach, within the language and meaning of the statute?

At another time these points may be argued at length.

Mr. Lunt having concluded his remarks, the Commissioner said that he should defer giving an opinion until morning, and the Court was accordingly adjourned until 10 o'clock to morrow forenoon.

Thursday, Feb. 20.

THIRD DAY.

DECISION OF THE COMMISSIONER—MR. WRIGHT HELD FOR TRIAL.

Agreeably to adjournment, the Court came in at ten o'clock. The Court-room was already densely filled with spectators, apparently quite anxious to learn the decision of the Commissioner in this, the first case of the kind which has ever been examined under the recent law.

The Commissioner immediately proceeded to give his decision in this important and interesting case, as follows:

OPINION.

This examination, as it comes before me, is a preliminary inquiry, by force of the Act of August 23, 1842 5th U. S. Statutes at Large, 517 giving power to the Commissioners of the Circuit Court of the United States, for any crime or offence against the United States, to arrest, imprison, or bail the party charged, as the case may be, for trial before such Court of the United States as has cognizance of the offence. To unlawfully obstruct the process or the administration of law, is an offence generally, but he crime here charged in the complaint upon the defendant, is aiding, assisting and abetting the person therein named, who was lawfully held in the custody of the Marshal of the United States, under arrest, as a fugitive from service or labor, pursuant to the Act of Sept. 18, 1850, chapter 60.

And the offence as created by that Act, in the 7th section is, rescuing or attempting to rescue such fugitive from service or labor, from the custody of the claimant his agent or attorney, or other persons lawfully assisting when so arrested, pursuant to the authority given in the Act; or aiding, abetting, or assisting such person, directly or indirectly, in escaping from such claimant, his agent or attorney, or other person or persons legally authorised as aforesaid. That is, any person legally authorised by this Act to hold or restrain such person in custody.

It is made the duty of the Commissioners having concurrent jurisdiction therein with the Judges of the Circuit and District Courts of the United States, to issue process under this act, and of the Marshals and their Deputies to execute all such warrants and precepts when to them directed.

The proof in the present case, is that a warrant was duly issued upon the proper preliminary evidence for the arrest of one Shadrach, a colored person, alleged to be a fugitive from service or labor, and who had escaped from service or labor in the State of Virginia, according to the laws of that State, and was claimed by the Agent or Attorney of the person to whom such labor or service was due. And the Marshal makes his return, that in obedience to the warrant, he had arrested the within named Shadrach, and then had him, to wit, on the day of an alleged rescue, before the Commissioner for examination.

It has been objected by the defence, that the warrant and return of the officer are not conclusive, except in the case for which the return was made. But they are clearly conclusive of the fact of arrest in that case, and thus prove that at the time of the alleged rescue, a party claimed and held in legal custody by the proper officer, under a lawful warrant, was so held under arrest pursuant to the Act of Sept. 18, 1850.

While so arrested as an alleged fugitive, and after he was committed by the Commissioner to close custody in the hands of the Marshal, for the very proper purpose of giving time to prepare his defence against the claim upon his person, and while, for the want of any other place of custody provided by the United States, he was restrained and kept in the U. S. Court room, a mob burst into the room, and against the resistance of the officers, rescued the prisoner.

The objection taken and much insisted on by the learned counsel for the defendant, is that the prosecution must prove affirmatively that the prisoner so rescued, while under arrest, was the identical Shadrack claimed and that he was held to service and labor by the laws of Virginia. This would involve the trial of the question of claim in the absence of the person claimed; so that in the hearing of a charge of the offence of a rescue, the *trial* of the claim, which was interrupted by the escape, must first be disposed of, before a party could be prosecuted for aiding in such escape. The hearing of the claim is, to some extent, judicial, and determines the matter, but the present hearing is only preliminary to a discharge or holding the party to answer. Hence, if the ground taken be a correct construction of the law, it would seem to follow that in every case of an arrest, a rescue may be made with impunity, because the trial of the claim to the service could not be determined after the escape.

If the objection does not go to this extent, but means only that there must be prima facie evidence that the person rescued was a fugitive from service or labor, and was claimed as such, that evidence for all the purposes of this hearing, is found in the warrant and return; the identity of the party claimed is connected with the arrest, and return by the testimony of the Deputy Marshal that the person rescued was the person arrested under the warrant.

The sixth section of the act refers to the person who is claimed before adjudication, as "such *alleged* fugitive," and this is his relation, until the hearing upon the claim shall be concluded. The next following section makes it an offence to rescue "*such* a fugitive," "while *so* arrested" in pursuance to the authority given by the act. In this view the evidence from the warrant, the records of the Court in Virginia in pursuance of the act, and the testimony of Mr. Commissioner Curtis and of the Deputy Marshal, are satisfactory to my mind, in making out a prima facie case on this point.

The defendant, if able, might have rebutted it by proof that the wrong person was arrested, or that he was not a fugitive under the Statute; but no such evidence has been offered; and the escape of the alleged fugitive by the aid of those who would probably have defended him on that ground, as they had a lawful right to do had such defence been available, is to be received, at least in a preliminary inquest, as tending to prove that no such ground could be taken. The objection, if of any force, may be urged in another form of trial, where the construction of the law is to be judicially settled by a competent tribunal; but in this preliminary hearing it is not my duty to set aside the law upon nice critical or technical objections.

I hold, therefore, that the body of the crime (that is, the offence contemplated by the 7th section) is sufficiently proved.

The only remaining inquiry is, whether the offence charged is sufficiently made out against the defendant; and on this question I have no power to decide the issue of guilty or not guilty. The simple issue here is, (as in all preliminary matters in hearing before an examining magistrate, not having full jurisdiction over the offence,) whether there is sufficient evidence to send the party to the proper tribunal for an inquest before the Grand Jury. My decision, therefore, can have no effect upon the guilt or innocence of the defendant, and can only determine whether he shall or shall not be held for trial before a Court of the United States having cognizance of the alleged offence.

In coming to a decision, I am bound to take the manifest weight of the evidence if it make out such a case as in the best discretion of the magistrate, would require one authorize a Grand Jury to find a true bill of indictment and I am obliged to come to that conclusion, without any doubt or hesitancy in my own judgment.

The reasons for this conclusion it is unnecessary to state with minuteness.

The defendant was present at the time the lawless act of violence was committed. Whether the evidence tends to open any previous concert or design is not material. It is said that he was present as a reporter, and the nature and importance of the duty of a true reporter have been well stated by the learned counsel for the defence. But the time and the place, and the refusal to depart, were not within the province of a reporter, and if that privilege was used to defy the law and its officers, and to encourage the escape of a prisoner, it would be rather an aggravation than a justification of the offence. The evidence on this point, and the defendant's address to the prisoner, is regarded in its bearing on the defendant only as tending to show a disregard of, and a predisposition to violate the law of the land in this particular; a law which so long as it remains a law on the statute book and is not pronounced void by the constitutional tribunal, is binding like all laws upon good citizens, and must be enforced against every one who is not content to be a good citizen, at least so far as to leave undone the only thing this law requires of him, and that is not to resist with violence or countenance the process or the officers of the law. He is not required to do any act to aid in the execution of this law, provided there is no resistance to lawful process and to the officers of the law. But if he assumes to interpret this or any other law for himself, and carries out that self-interpretation by a breach of law, or aiding that breach in others, the constituted tribunals, as conservators of the peace, must be called upon to interpret his interpretation, and apply the punishment provided for the offence.

The defendant is not held to answer for his opinions as has been suggested for the defence. Every citizen may hold and express his opinion for or against any particular law, and take all lawful means to change such law, or to defend all who are held to answer under it. But if he carries his opinions into an overt act against law, he must answer for that act, as the law holds all to answer who violate its sanctions.

Feb. 24

In a government of the people, where all law is made or unmade by the majority, the citizen who knowingly and wilfully violates law, commits a crime against himself as well as against society. And while he claims the general protection of all law for the security of his property and person, he can have no right, under that protection which a government of laws gives him, to violate a particular law which he may disapprove, and thereby set the example for rendering society unsafe, by bringing the laws of the land into contempt.

These suggestions are not immediately applicable to the case, and have had no weight in the conclusion I have been obliged to come to; but they are not inapplicable to the line of argument adopted by one of the defendant's counsel, or unfitted to the aspect of this case in its bearing upon the dangers and the duties that surround us, as citizens of the Commonwealth and of the Union.

My conclusion in sending up the complaint, is determined mainly by the bearing of the testimony upon one point. The weight of the evidence goes to establish the fact that just about the time the rush was made by the rescuers from the outside, that act was either preceded or accompanied by a call to come in. Three witnesses are positive that this invitation came from the defendant and one other witness heard the words "come in," or "in, in." This exclamation could not have come from any person outside of the door, and all the circumstances surrounding the defendant, in the testimony, tend to fix it upon him.

Mr. P. Riley saw the defendant standing in the jury seats, doing nothing, but the precise time is left uncertain, because he states that his attention was occupied by the prisoner, and when he left the prisoner and rushed to the door, he was pressed between the baize door and the Judge's bench, and he there pointed to the prisoner, to deter him, though he had no weapon, and told him he would shoot him if he stirred. This is not inconsistent with other testimony, tending to show that the defendant was forced back or came back into the room simultaneously with the rush of the mob, which followed, or accompanied the call to come in.

The testimony of Mr. Davis, for the defence, does not necessarily conflict with the current of the government's testimony. He says that when he went out he did not see the defendant at all; that as he slipped out he saw black fingers on the door, and then the door was closed immediately after he saw the fingers on the door, and he made out to get down to the landing. But if there is a conflict of testimony here, it is of that nature that it is the province of a jury and not of an examining magistrate to settle it.

If the call to come in was made by the defendant, it could have been only for the purpose of inviting and aiding in a rescue, because at that time the defendant knew that the Marshal had directed all but the officers to retire, with the view of keeping the prisoner in close custody, and none but the officers, the prisoner, and the defendant were there as the mob broke in.

Such an act, followed as it was by the rescue of the prisoner, and the conduct of the defendant before and at the time, would seem plainly to come within the provisions of the statute, constituting, directly or indirectly, the offence charged. The defendant has failed to explain the evidence against him here; I earnestly hope he may be able to do so elsewhere.

The defendant is ordered to recognize in the sum of three thousand dollars, with surety for his appearance at the District Court of the United States, next to be holden in Boston, the 3rd Tuesday of March next.

After Mr. Hallett had concluded, Mr. Sewall said that as the penalty was but $1,000 and six months imprisonment, he wished to enquire if the court had any doubt that half of the amount of the present bail would be sufficient to hold the defendant.

Mr. Hallett. "If the prisoner is not able to give bail in the sum of $8,000, I should be glad to entertain your proposition."

Mr. Sewall. "I have no doubt that he could give $50,000; but if $1,000 was sufficient to hold Gen. Quitman, who is under arrest for treason, I think $1,500 or $1,000 is sufficient to hold Mr. Wright."

Mr. Hallett. I am not at all disposed to have the bail excessive in this matter; and therefore in consideration of the representation of the counsel for the defence, the bail is fixed at $2000.

Mr. Sewall then became surety in that sum for the appearance of Mr. Wright before the District Court of the United States, on the third Tuesday of March next, for trial.

EXAMINATION IN THE CASE OF CHAS. G. DAVIS.

Immediately following the decision in the case of Elizur Wright, Charles G. Davis, Attorney and Counsellor at law, was put upon his examination on the charge that on the 15th instant, he did aid and assist in the escape of Shadrach; also, that he aided and assisted in the rescue of said Shadrach, from the custody of Charles De vons United States Marshal, and to the charge the defendant pleaded not guilty.

Mr. Davis manages his own case, assisted by R. H. Dana, Jr., Esq.

Patrick Riley, Deputy Marshal, called and sworn. Was present on Saturday last, and had an alleged fugitive in custody; a colored man. Saw nothing in the conduct of Shadrach which would be different from what any person in his situation naturally would. I saw him remove his coat and also his neck-cloth. Knew that he had no weapons, and was anxious that none should be given to him. Shadrach told me Mr. Davis was one of his counsel. Mr. Davis was present about the commencement of the proceedings, and I do not remember of his leaving the Court room, until the rush, unless it might have been when I stepped out into the entry after the adjournment, and before Mr. Wright came in, for the purpose of requesting the messenger of the building, Mr. Merrill, to close such of the doors of the building as were not necessary to have remain open. At that time the Supreme, Common Pleas, Municipal and Police Courts were all in session in this building or had been that morning. I did not see Mr. Davis after he passed the inner door. At that time I was by the prisoner; heard Mr. Davis say nothing offensive.

Cross examined by Mr. Davis. I believe you was sitting at the table examining the documents, immediately after the order was given to leave the room. When I went out to see Mr. Merrill, I went to the end of the passage, next to the Supreme Court room, where I met Mr. Merrill, and upon my return into this room, I did not observe you in the room. I do not know of ever having, on any other occasion, more than one officer on the outside of the door of this Court. The United States have no authority or right to obstruct the passage-ways with officers.

After the rescue, I ordered the officers to go in pursuit of the fugitive. After this, and before I had any conversation with Mr. Clark or Mr. Sawin, I had prepared and sworn to my affidavit.

At the time of the rush, Mr. Warren (as he informs me) was on the outside, and ran to the office of the City Marshal. A gentleman, who gave his name as Charles F. Flint, of Reading, volunteered his services.

I was inquired of, where the prisoner would probably be kept. I did not care about informing all, what particular room the prisoner would be kept in, but I did say that the counsel could have an opportunity of communicating with the prisoner. Mr. List was making some inquiry about Mr. Dana's wishing a copy of the warrant. He said he was going to Mr. Dana's office, and he would take it. I had a copy of the warrant in my hand, which I handed to Mr. List, and I suppose he took it to Mr. Dana. It is my impression that you and Mr. Wright and the colored preacher were gradually moving to the door.

To Mr. Dana—I don't remember of your telling me that you wanted a copy of the warrant for the reason that you intended to get out a *habeas corpus*.

To Mr. Davis—Either Mr Davis or Mr. Sewall requested if some friend might remain with Shadrach. I do not undertake to say Mr. Davis made that request, but it was one of the two. The "*friend*" was a colored man. I do not *know* that the person arrested on my warrant *was* Shadrach, but the person arrested on that warrant is the same that has escaped, and is the one named in my return.

The Commissioner—If the alleged fugitive slave was arrested, it makes no difference whether the arrested party was, in fact, a fugitive slave, or only an alleged fugitive slave.

Mr. Dana—The question now is, is the person named in the warrant, the person who was arrested? and the answer of the witness is, that he does not know.

Mr. Lunt—The return of the officer on the warrant says that he has "the said Shadrach before the Court." If this is an error, and the officer made a mistake, and arrested the wrong person, he is only liable in a civil case for trespass or damage.

The Commissioner. It is not competent for the officer to testify contradictory to the return on his warrant. The legal bearing of this point may be argued at another time. The counsel will understand that I have the question and the answer, and shall give to them such construction as I may understand is due them.

To Mr. Dana—I remember your asking me for a copy of the warrant and my return, and I told you I would before two o'clock. At the time Mr. Davis was going towards the door, I had no apprehension that there would be any attempt at rescue; do not remember of seeing Mr. Davis outside of the bar that morning; do not remember of seeing him converse with any one but counsel; I feared there might be trouble, but I had not any idea that *at that time* there would be any attempt at a rescue.

wards the prisoner.

To Mr. LUNT—I was in the room *all* the time excepting when I went to the end of the passage to see Mr. Merrill. I was not absent more than a minute and a half. Mr. Davis certainly could have been absent several times during the two hours I was in the room, without my knowing it. At the time I went out into the passage way, a gentleman, Dr. Channing, a chemist, not the old gentleman, who was standing on the stairs, said to me, "*you will have to answer to your God for this.*" Quite a number of negroes were about at the time. At the same time some negro or some person, said "*there goes a whelp of the law.*"

Charles Sawin called and sworn. Saw Mr. Davis in this room on Saturday. When he came, Mr. Davis proceeded (before the adjournment) to a table; Mr Clark was sitting at the right of the prisoner: Davis asked me if he (Clark) was a Southern man; I replied No, that he was a citizen; I then asked him what was in the wind? He said, nothing as he knew of—it was a d—d dirty piece of business. Afterwards, both of us had changed our positions; this was after the adjournment. Davis then said, "You all ought to have your throats cut." This was after the order had been given to clear the room. I made no reply, thinking it was altogether an improper and uncalled for remark; I missed Mr. Davis and Mr. Wright at the same time.

After a tall man (whom I did not know) had whispered to the prisoner, and while Commissioner Curtis was on the bench, the prisoner jumped up, pulled off his coat, and looked quite savage, as I thought. After the man whispered in his ear, the prisoner pulled off his coat and rolled up his shirt sleeves; when he was brought into the court room he had no coat on; his coat was afterwards brought to him in the room: I think he had no coat on when he was rescued; I told him he had better put his coat on for fear he would take cold; when Davis left the room I was near the prisoner; after he left the room, heard some one say, "take him out, boys," and repeat it.

To Mr. DAVIS—When this cry was made, you might have been just outside the door, or you might have been half way down stairs. The cry was made not more than two minutes after I missed you, I did not see you go out.

You and myself have always been on friendly terms, since I have known you. You did not qualify the expression you made to me. I thought it was a lawful business and I did not think it was very dirty. I never told you I was a Deputy Marshal. You have known me as a constable. I hold a warrant now. You came along and said "you'd ought to have your throats cut—all of you." I did not know at that time that you had had any conversation with Mr. Byrnes at that time. I supposed you might be counsel as you was setting at the table.

You appeared to be engaged with the others around the table. You was sitting with your back towards the prisoner. I heard Mr. Riley say to the prisoner, "Now pretty soon we'll have dinner."

Frederick D. Byrnes called and sworn. Saw Mr. Davis here on Saturday, while the proceedings before Mr. Curtis were in progress. Heard him say it was "d——d mean business." At this time the prisoner was at the bar. Davis was within the bar. Davis was within about two feet, and I was about four feet from the prisoner.

At times I am a little deaf. Davis spoke so that I heard him. Afterwards, and after the hearing had closed, and as I think, the prisoner was at the table, and when Mr. Sawin and myself were standing against the rail, Davis said to us "you are a d—d pretty mess," or a "d—d pretty set." Sometime after this, when all had left but Mr. Wright and Mr. Davis Mr. Davis came along and was going towards the door, when I said to him as he was passing along, "Mr. Davis I always took you to be a gentleman, and I am very sorry I can't do so now." He said "why?" I said "from the remark you made awhile ago." He said "I say so now." I was then standing near the door. I didn't see any thing as he went out.

As Mr. Wright was passing out immediately afterwards, I saw Mr. Davis standing by the side of the door in the passage-way. I heard a voice which at the time I thought was Mr. Davis's say, "take him out boys, take him out;" I did not see his lips move, but I thought it was him then, and think so now.

Mr. LUNT—Do you believe it was Mr. Davies?

Mr. DANA—I object to the question.

Mr. LUNT—Did you recognize the voice?

WITNESS—I took it to be Mr. Davies's voice.

To the COMMISSIONER—At that time he (Davis) was standing just at the outside of the door.

To Mr. DAVIS—I was not stationed at the door in particular; I was at the door several times; don't know what Mr. Clark's position was; the baize door was then open by some means or other as you was passing out; I don't think the baize door closed after you passed out; the baize door was not fastened open; heard a shouting in the entry after the pulling commenced; it was all done in less time than I can tell it; don't think it could have been three minutes after you went out.

When you passed out there was no rush, but I think hands were on the door. After you passed out, I turned round, and with one hand on Wright's back and the other on his arm, passed him gently to the threshhold, and the rush then occurred. At the time I passed out, Mr. Hutchins had the immediate care of the door. I thought you was the person at the time I heard the words that were spoken, and I told others so when I came in. I think I said yesterday, that I heard no one but Mr. Wright say "come in." Did not hear Mr. Riley say "come in."

To Mr. DANA. To-day I'm rather hard of hearing. On Saturday I could hear about the same as to-day. My deafness came on when Elder Knapp was here, some eight years ago, at the time of the disturbance in Bowdoin square.

To Mr. LUNT—Immediately after the door was opened I saw a black man standing back near the stairs that lead to the Municipal Court, with a cleaver in his hand, and his hand raised over his head.

To the COMMISSIONER—This was after I heard the voice. The passage was full all around the door. There were some half dozen voices. Did not see any other white man as I recollect, except Mr. Davis and Mr. Wright.—Thought the voice I supposed came from Mr. Davis, was his, because a black man's voice is different from the voice of a white man. I only give it as my opinion. I distinguished the voice just the same as I should Mr. Lunt's voice from Mr. Dana's. I have conversed with Mr. Davis several times within two years.

At this stage, the court adjourned till to-morrow morning at 10 o'clock.

[Reported for the Boston Journal.]

EXAMINATION OF CHAS. G. DAVIS,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

FRIDAY, Feb. 21.

SECOND DAY.

The examination of Charles G. Davis, charged with aiding in the escape and rescue of the fugitive Shadrach, was resumed at 10 o'clock this morning.

Calvin Hutchins called and sworn—Was hold of the door when Davis went out. When I opened the door for him to go out, I did not have to push on it, but had to hold it from being pulled open by those on the outside. The entry and stairs were all filled. When he stepped around and got his back towards the inner side of the door, he clapped his left hand up against the door. At that there was a cry of "Go in," and the door kept opening until it was thrown entirely open. I opened the door for him, the same as I had opened it for all others who had gone out. When the door was pulled from me, I was forced outside and shoved around with the door as it went back towards the wall.

To Mr. DAVIS—Was at the room a great part of the time after the room was cleared with the exception of yourself and some half dozen others who were about the table. Saw Mr. Homer after I was thrown around against the door. Also saw Mr. E. J. Jones and called on him to assist me. I opened the door sufficiently wide for you to go out. Have known you several years. Every time I went to open the door, they (the crowd) tried to get in.

To the COMMISSIONER—His back when he placed his hand against the door, was against the side where the door shuts.

[Here the court, counsel and witness went to the door, and witness explained his and Davis's positions.]

At that time I had hold of the door with but one hand. After the door started, I could not say in what direction Davis went.

Seth J. Thomas, Esq., called and sworn—Have no interest in the penalties imposed by this act. Am the Attorney of Mr. De Bree in the case. Have special instructions in writing from Mr. De Bree in regard to this matter, but nothing in the usual form of a power of Attorney. I act as Attorney for Mr. De Bree and Mr. Cuphart in this matter. Was in the court room on Saturday last. Saw a person here called Shadrack. He was in the hands of the Marshal according to law.

[Here a discussion took place upon the point of the identity of the party arrested, as *the* person named in the warrant upon which the arrest was made. The discussion did not differ materially from that had on the same point, which was urged in the case of Elizur Wright.]

The negro man under arrest, and in custody of the Marshal in this room on Saturday last, was the person claimed by Mr. Cuphart, the agent of Mr. De Bree, as Shadrach.

When he (Mr. Cuphart) came into the room, he said the party arrested was the boy Shadrach.

Simpson Clark called—I had conversation with Shadrach in this room on Saturday.

Mr. DANA objected to that conversation.

Mr. LUNT proposed to prove by the witness that the party arrested said he was Shadrach, the slave of Mr. De Bree.

The COMMISSIONER said this was going into the identity of the person, and the best evidence of a party in his own statements and admissions.

WITNESS—The colored man asked Mr. Sawin who it was that claimed him. He (Sawin) told him a name, and the prisoner said he did not know any such man.

Mr. Sawin then asked him his name, and he replied "Shadrach."

He (Shadrach) then turned to me and commenced telling me something about himself, and I told him not to talk to me, and moved from him.

I heard Mr. Davis testify the other day, in the case of Mr. Wright.

To Mr. DAVIS—Couldn't say whether or not you was in the room all the time.

To the COMMISSIONER—I heard some person in rear of the prisoner, (I think while Mr. Curtis was on the bench,) say "We'll stand by you to the death." These are the words I think, and am quite positive of it.

George T. Curtis, Esq., called and sworn—There was no actual disturbance during the proceedings before me on Saturday. Heard the words "We'll stand by you." Mr. Riley immediately sent a man to remove the person who spoke. Saw Mr. Davis in the room, but saw him do no act, or, as far as my observation went, take any part in the proceedings which conveyed the impression that he was acting as counsel. Mr. Marcus Morton, Jr., Mr. Sewall, and Mr. Ellis Gray Loring, came in, and the two last were the only two whom I recognised as counsel for the prisoner. If others had interfered as such, I should have limited the number to two. Mr. Davis came in after the discussion had commenced as to whether there should be a postponement.

The first thing I asked Mr. Sewall after he had announced himself as counsel, was whether the examination should proceed or whether he desired a postponement.

[Papers and documents were here produced and identified as the original papers in the case, and the same which in a previous case had been handed to Mr. Sewall for examination.]

I understood the whole proceeding to relate to the person who was in custody, and that the subject of claim related to the same party.

To Mr. DANA—Did not see Mr. Davis speak to Mr. Sewall or to the prisoner, or to the Court; neither did I see him examine the papers, during the proceedings.

To the COMMISSIONER—On the adjournment of those proceedings, I left the party arrested in the custody of the Marsha.

Austin S. Cushing called and sworn.—Was present on Saturday during the proceedings a part of the time.—While Mr. Curtis was on the bench, and I think after the order had been given to clear the room, I saw some person who appeared to be disinclined to leave, reach over the rail in rear of the prisoner, and touching him, called him by name, but can't say what the name was, and said, "we'll stand by you to the death."

Here Mr. DANA stated that he had examined the papers which the District Attorney proposed to put into the case, and objected to their being considered in the case.

Mr. LUNT—The papers are offered as having been in testimony before Mr. Curtis, not to prove any particular fact in this particular case.

[Here the Court took a recess.]

After the recess,

Jeremiah S. Prescott was called and sworn. Am employed by the Fitchburg Railroad Co., on wood work.—Was in the passage-way to this Court room on Saturday afternoon last, about two o'clock. Had been in the Supreme Court room to see Mr. Pearson. As I came out, I saw a large crowd of negroes in the passage-way. Some of the negroes were arguing. Heard one of them say, "I go in for for excitement; the more excitement the better." I also saw a white gentleman whom I did not know at the time, but who was that gentleman—pointing to Mr. Davis. I soon lost sight of him. Just about this time, I saw a stout negro (who had on a hat such as I call a "sou'wester,") come along the passage way from the Supreme Court room, hurrying along. As he came towards the crowd, some negro said, "you are just the man we want." Another said, "he's the boy for 'em;" and another said, "I'll risk my life." A colored man with a white neck-o'oth on, said, "don't be so excited—it won't do." At this another negro said, "It will do—it will have to do." Just at that time, a young white man, whom I took to be a clerk in some of the offices, came up and said, "what's it all about?" I replied that I did not know.

I did not then know what the case was, but supposed the Court was in session. The crowd had then got the outside door opened, and there appeared to be some trouble about their getting the inside door open. Heard some one then say, "Go it—we are prepared for 'em—knife him." Just at that time a white man came down from up stairs, and jumped on to those who were in the rush, and told them to "hold on," and appeared to do all he could to stop them. By this time the crowd who had been into the Court room were returning with a man who appeared to be in the centre. The whole crowd that were in the passage-way did not go in.

To Mr. DANA—I recognize Mr. Davis as a man whom I saw in Tremont Temple at the time Mr. Thompson had a meeting there; I noticed his face particularly. I think Mr. Davis spoke to some person in the entry as he passed.

The government here rested their case.

Mr. DANA suggested that he did not think that there was sufficient testimony bearing against the defendant to hold him to answer, and if that was the opinion of the Court, he would not proceed to offer any testimony, but if the Court took a different view of the matter, he would proceed with the defence.

TESTIMONY FOR THE DEFENCE.

Mr. DANA notified the Court that he had witnesses whom he proposed to produce relative to the impeachment of Mr. Byrnes.

William W. Ross called—Had known Frederick D. Byrnes some three years.

Patrick Riley called. Mr. Davis asked me in the doorway of the entry to the Court House on Saturday morning, before the arrest of Shadrach, why I had not told him that more warrants were out?

I told him that I had not seen any, and if I had seen any I should have given the same answer.

At the time the prisoner went out of the room, I can't say whether or not he had his coat on.

Henry Homer called and sworn—On Saturday afternoon last I was on the third or fourth step from the level of this floor, on the stairs leading up to the Municipal Court room. At this time the wood door was open, I think, and the baize door nearly or quite closed. Did not see Mr. Byrnes. Saw no white man, and but one black man in the crowd that I recognized.

The crowd was not at that moment pressing very hard. The cry was made to "take him out—go in." After this was repeated two or three times the crowd rushed in, and went to the slave Shadrach, and two stout negroes, one each side, shoved him along, in company with some fifteen others, and passed him along down the stairs; the passage way was completely blocked up, but there were not more than three or four persons on the stairs when the rush was made.

When Shadrach came out he had his coat on, and also his hat. When the rush was made I ran up to the top of the stairs, opened the window, and looking down into the Square saw Shadrach just coming out of the side door.

His coat was there torn off him, and his hat knocked off; a colored woman took hold of his hair or wool and said, "God bless you, have they got you?" Shadrach appeared very much frightened, and didn't appear to know whether he was in the hands of his friends or foes.

I can't say that Mr. Davis spoke in the passage-way. I don't think I heard any but negroes speak. When I reached the stair, I had no apprehension of any rescue taking place, but supposed the crowd were anxious to get into the room to hear the proceedings. The whole thing was done in perhaps ten seconds, or they were but a moment about it.

FRIDAY, *Feb.* 21, *P. M.*

SECOND DAY.
AFTERNOON SESSION.

Gustavus Andrews called—Am keeper of Suffolk jail; know Frederick D. Byrnes; have been jailor about two and a half years; his character for truth and veracity as far as I know is bad.

To Mr. LUNT—Have heard his character discussed by officers and others a great many times within the past five or six years; have heard it stated that he was not to be believed, that he was a liar, &c.; have not had any dealings with him during the past two years.

Hiram Wellington called—Am a counsellor at law; have known Byrnes since 1842; his general reputation for truth and veracity is decidedly bad.

To Mr. LUNT—Some four or five years ago he brought a suit against me in the Justice's Court, and he recovered against me; am not aware of his ever having made any complaint against me; I don't recollect particularly about the suit.

William W. Ross recalled—Have known Byrnes by reputation for some three years; his general reputation for truth and veracity is decidedly bad; I know his general reputation.

To Mr. LUNT—Have heard his character discussed many times; have heard him called a liar perhaps twenty times within a week at my store; have heard Mrs. Martha Adams, who kept his house at Cape Cottage, when it was mysteriously burnt down and the insurance recovered, speak against him; I can't recall any other case at this moment.

Derastus Clapp called—Have been an officer of the city twenty-three years; for the last two years I have not heard his character called in question. Previous to that, have no knowledge of his general character for truth and veracity.

Ira Gibbs called—Have lived in Boston over thirty years; have known Byrnes some ten years; upon the particular question of truth and veracity, I don't think I have heard a great many people speak against it; I have heard some speak against it at different periods during several years; have no knowledge within myself but that he is a man of truth, only what I have heard people say.

Charles Smith called—Have known Byrnes about ten years; know his general reputation for truth and veracity; it is bad.

To Mr. LUNT—Have heard his character discussed most every day this week; can't recollect who I have heard speak of it; will not swear to any person whom I have heard discuss it; have heard it spoken of since this trial has been going on; have known Mr. Byrnes as an officer; don't remember ever having heard him as a witness on the stand, but have heard him spoken of as a witness; have heard that he had difficulty with Mr. Leighton; think that one whom I have heard speak of his character was his opponent in a case tried at East Cambridge.

Elbein Rice called—Am a constable; have known Mr. Byrnes seven or eight years; think I have the means of knowing his general character for truth and veracity; it is bad.

To Mr. LUNT—Have heard t discussed within the last six months or year; have heard Mr. Adin Hall speak of it; conversation which I heard about his character was about the time the trial took place, when an effort was made to impeach him.

George J. Dexter called—Have lived in Boston thirty years; am a constable; know the general reputation of Mr. Byrnes for truth and veracity; it is bad.

Alonzo F. Neals called—Have known Mr. Byrnes by sight some two years. Do not think I know his general reputation for truth and veracity. Have heard him spoken of as I have many others.

Luther Hutchins called—Am a watchman. Have known Mr. Byrnes since about the time his trial took place in the Municipal Court. Have heard his general character spoken of for truth and veracity as bad. Never heard him spoken of before the trial.

Adjourned to ten o'clock Saturday morning.

EXAMINATION OF CHAS. G. DAVIS,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

[*See first page for yesterday afternoon's proceedings.*]

SATURDAY, Feb. 22.

THIRD DAY.

TESTIMONY FOR THE DEFENCE—CONTINUED.

The examination of Charles G. Davis, charged with aiding in the rescue of Shadrach, on the 15th inst., was resumed in the United States Court room, at 10 o'clock this morning.

Derastus Clapp re-called—

By the COMMISSIONER—Do you know the general reputation of Frederick D. Byrnes for truth and veracity?

Ans.—Should say it was bad, but my knowledge extends previous to two years ago.

By Mr. DANA—Have not heard of it at all within two years.

To Mr. LUNT—Have heard it spoken of in relation to business transactions.

To the COMMISSIONER—It was not in regard to promises to pay at all; one was in regard to a civil affair in New Bedford, and the other to a criminal affair in Boston.

John G. King called—Was in this Court room on Saturday last; came in before Commissioner Curtis began his hearing and remained until it was nearly closed; I recollect seeing Mr. Davis here when I came in; when I left, Mr. Davis was in conversation with Mr. Sewall. I drew up a Power of Attorney, and the prisoner signed it in my presence. I drew it up for the purpose of obtaining a writ of *habeas corpus*. Can't say whether Mr. Davis left or not. I know that the prisoner employed Mr. Davis as his counsel.

To Mr. LUNT—The only persons whom I recollect distinctly of leaving behind me in the room, were the officers, Mr. Davis, Mr. Sewall, and I think, Mr. List. When they were about clearing the room, the prisoner pointed to Mr. Davis as one of his counsel, Mr. Sewall as another.

To Mr. DANA—At the time the prisoner pointed out Mr. Davis, I think Davis was standing near the prisoner.

Marcus Morton, Jr. called—Was in this room a part of the time on Saturday last; was sent for by the prisoner; have known him for six or nine months. He requested me to see that his coat and cap were sent for. I sent for them. During that forenoon there was an attempt made to procure funds to purchase his freedom. I called upon Col. Thomas, the counsel for the claimant, after leaving the Court House for the last time, to see if that course could be pursued. Do not know that Mr. Davis had any knowledge of this movement being made. Col. Thomas was to give me an answer on Monday morning.

To Mr. LUNT—I communicated that fact, or rather my intention to Mr. Ellis Gray Loring. Don't recollect of communicating it to any person in the Court House. This was after it was known that the adjournment had taken place.

an unconstitutional tax is levied, you]

Charles List called—Am a counsellor at law in Boston; was in this room on Saturday last; know that Mr. Davis was here in the capacity of counsel for Shadrach, because I heard Shadrach ask him to serve as counsel for him; about the time the acting Marshal was clearing the room, the Marshal asked the prisoner who were to remain as his counsel; he (Shadrach) pointed to Mr. Davis as one of them; while I was in the room I was told that proceedings were being had in relation to a writ of *habeas corpus*; Mr. Riley gave me a copy of his warrant and return about ten or twelve minutes before two o'clock; remember that an examination of five documents was made at a table, by Mr. Davis, Mr. Sewall, and Mr. Loring, but more particularly Mr. Davis, and that he (Davis) made objections as to their sufficiency; I recollect that Mr. Davis spoke with great positiveness on the point of the insufficiency of the papers.

I think I left the room eight or ten minutes before two o'clock. Left Mr. Davis in the room. To my knowledge Mr. Davis did not leave the court room. I was in the room all the time until I left a few minutes before two o'clock, excepting that I went to the door of the Law Library, and immediately returned. I think I may say positively that Mr. Davis was in the room as long as I was.

To the Commissioner—When I went out the last time, after the adjournment, there were a considerable number of colored persons in the entry and on the steps, but I had no difficulty in getting along. In the lower entry, I tried to open two doors on the westerly side of the Court House, and as I couldn't open them readily, I supposed them to be locked. While in the court room, I had considerable intercourse with Mr. Davis.

It was agreed among the counsel for the prisoner before we left this room, to have a meeting that afternoon at Mr. Sewall's office, at 3½ o'clock, and also the next (Sunday) morning at 10 o'clock, to consult upon measures to be taken for the defence.

To Mr. Lunt—Was present as one of the counsel for the prisoner. The number of his counsel consisted of seven or eight persons. Am not sure that Mr. Davis then and there was one of those consulted. Am not sure that I personally informed him of the fact.

[At this point, a colored man named Thomas Paul Smith, was brought into the room by the officers, and placed at the bar, charged with aiding in the escape of Shadrach.]

At the time of the rescue, I was on the easterly side of the Court House, in the square. I saw a rush outside, and upon inquiring the cause, was told that the prisoner had *left*. The rescue was a matter of surprise to me. I think I am as much interested in the escape as the colored people. Have frequently expressed myself in very strong terms in relation to the law, and probably shall again. My sentiments are against breaking the law, but I wish it to be understood that I am opposed to the law (the fugitive slave law so called.) The conference which was to be held, was in reference to adopting measures to make a legal defence; the meeting in the afternoon was not held; the meeting on Sunday morning was held in Mr. Sewall's office: Messrs. Ellis Gray Loring, Wm. J. Bowditch, Mr. Sewall and myself were present. We met to consult upon the probability of having a hearing during the absence of the alleged fugitive.

Thomas S. Harlow called—Am a counsellor at law; know the general reputation of Mr. Byrnes for truth and veracity; it is not good; have known him six or seven years.

To Mr. Lunt—Have heard him talked about a great many times; can't say how many times; can't name any person who has spoken of him, nor a single time when his reputation was spoken of; I know his reputation by general conversation with officers and others about the courts; I formed my opinion upon a matter of common knowledge; do not state his general character upon any particular transaction.

George W. Adams called—Am a member of Suffolk Bar; have resided in Boston about twenty-five years; came into this Court room between one and two o'clock on Saturday last—about two o'clock, I should think; as I entered the east door of the Court House I met colored people rushing past me, going out; met Mr. Davis near the door of the Marshal's office; had some conversation with him there; talked with him two or three minutes; while talking with him I heard a noise and shout, which appeared to me to come from the direction of the door of this room; when I had finished talking with Davis, I passed out into the square towards the corner of the building, and saw the mob entering Court street and going towards Scollay's building; I then knew of no rescue having been made; I am near-sighted.

To the Commissioner—I remained at the corner but a moment. The mob were running towards Scollay's building.

Alonzo F. Neale re-called—Was in this room on Saturday last. Was spoken to first on that day by Mr. Noyes, Messenger to the United States Court room, who asked me step into this room, and I did so. Saw Mr. Davis in the room leaning against the west rail of the Bar. About the time Mr. Davis was passing out, and before he went out, some person, and I think two others, asked me to let him out. Mr. Hutchins opened the door, when the other person (whom I supposed was Mr. Wright) and Mr. Davis passed out as I thought. I can't say positively that Mr. Wright did pass out, as my attention was at that moment called to the prisoner, who was putting his coat on. At that moment I perceived that Mr. Hutchins had been twitched from the door on the outside.

I immediately sprung to the door and pressed against the baize door as hard as I could to keep the crowd out; some of the colored men had already got inside; thought that Mr. Davis passed out first; don't think the door shut afterwards, but at one time I think it was nearly brought to; at the time Davis went out, should think Mr. Byrnes was standing inside the door; it is my impression that when the yell was given, Mr. Byrnes sprung to the door, and Mr. Clark also; it was all done in quite a hurry; it is my opinion that Mr. Byrnes was behind the baize door, but would not swear positively; did not see him between the baize door and the outside door.

At the time the first yell was given, some one, but can't say who, was between the two doors with Mr. Hutchins.

To the Commissioner—After the prisoner put on his coat I can't say that he sat down again. At the time of the yell I think the prisoner left the bar and ran in two or three directions part way across the Court room. Saw the prisoner when he passed out; held on to the door as long as I could, and looked back to see if I was not going to have assistance. Mr. John Riley was in one of the windows and raised it, as I supposed, to call for assistance. When the crowd did finally break in, I stepped one side, and they came in, took the prisoner, and passed him out.

To Mr. Dana—Can't say positively whether one or two passed out with Davis. Before the prisoner put his coat on, I heard a good deal of hallooing at the door, and a noise in the passage-way. They appeared to be talking, and made a general noise.

George W. Minns called—Am a counsellor at law. Saw Mr. Davis in this room on Saturday last. Came in between one and two o'clock, I should think, after the room had been cleared. Heard some man behind me, while in the Court room, conclude a sentence with the words, "kill the negroes." It was not a yell—merely a remark.—Can't swear who it was that said it.

Mr. Lunt objected to this course of testimony.

Mr. Dana said his intention was to connect this with other testimony which had been admitted.

[Here a little sparring occurred between Mr. Lunt and Mr. Dana in relation to counsel needing *watching*, while conducting a case in Court. The matter was settled without any "apology" being made, as Mr. Dana thought Mr. Lunt would apologise at some time, but which, Mr. Lunt said he should not make, as he did not apprehend that his brother Dana needed more watching than himself or any other member of the bar while conducting a case.]

Upon the remark "Kill the negroes" being made, Mr. Davis appeared somewhat excited, and then said, "you ought to have your throats cut."

To Mr. Lunt—Did not turn round when I heard that expression, because I was looking at the prisoner, and was most interested in him. The remark did not appear to me to be made by any one with the intention of killing the negroes.

Frederick Warren, Deputy U. S. Marshal, called—I left the court room as I suppose about five minutes before the rescue on Saturday; went down into the Marshal's office; came back up the stairs leading to the Supreme Court room; passed through the passage-way and into the water closet on this floor; was there when the rush was made; many colored people were in the passage-way.

[This is probably the man whom Mr. Prescott in his testimony yesterday described as a clerk in one of the offices, and whom he thought entered the court room through the private door, which was constantly kept closed. The water closet is immediately behind the private door.]

When I heard the rush, I left the closet as soon as I could, and seeing the public door swaying, and the crowd being more dense, I went through the passage way, down the further stairs, and over to the City Marshal's office.

To the Commissioner—As I went into the recess or closet, do not remember of addressing any one: when I came back from the City Marshal's office, I found that the rescue had been made.

Richard H. Dana, Jr. (counsel) called—Mr Davis called at my office on Saturday last, called at my office, told me a fugitive was arrested and was then in the U. S. Court room. He also suggested that we should go over and act as his counsel. When we arrived in the Court room, Commissioner Curtis was on the bench. It was then agreed that I should take charge of getting out a petition for a writ of *habeas corpus*, for the purpose of testing the constitutionality of the power of a Commissioner issuing a warrant. I went down into the Marshal's office and drew the writ there. I presented the petition for a writ of habeas corpus to Judge Shaw, but which he declined to grant for reasons which he gave.

[Mr. Dana detailed the circumstances relative to the procuring of a writ of *habeas corpus*.]

When the Commissioner announced the adjournment on Saturday, those inside left the room as quietly, for all that I saw, as on any ordinary occasion.

While in my office, opposite the westerly entrance of the Court House, I saw three negroes come down the steps; the one in the middle I took to be the fugitive, and when he came down the steps he had his coat on; from another window in my office I looked out into the street, and I then saw that the fugitive had no coat on; the second time I saw the fugitive there appeared to be a knot of men all around him.

To Mr. LUNT—Before the rescue, I don't remember that anything had been said to me about using force, but I can say that I heard no one of the counsel, Mr. Davis included, say anything about using force in this case. I know that Mr. Davis is opposed to using force in these cases. He agrees with me on that point. Am confident that no person ever made any suggestion to me to use force

Elizur Wright, called—Was in the Court room on Saturday last. Arrived here about half past one P. M. When I came in I went to Mr. Sewall and asked him "what this meant?" He replied that a man had been arrested while eating his breakfast, and that he had examined the papers and he thought them insufficient. I saw Mr. Davis, but was not acquainted with him. He told me Mr. Riley was Deputy Marshal.

Did not see Mr. Davis doing anything after that, and very soon I went away; I did say to a number of persons, Mr. Davis might have been one, I rather think he was, that there were but a few persons outside. I was not in the Court room more than half an hour; During that time I am sure Mr. Davis did not leave the Court room.

Adjourned to Monday morning at 10 o'clock.

MONDAY, Feb. 21.

FOURTH DAY.

TESTIMONY FOR THE DEFENCE—CONTINUED.

The examination of Charles G. Davis was resumed in the U. S. Court room at twenty minutes past ten o'clock this morning.

Elizur Wright re-called—Should think I was in this room on Saturday 15 or 20 minutes. Davis certainly did not leave the room after I came in, until he left finally.

To Mr. LUNT—There was not time for him to have gone out and returned; it was perfectly impossible for Davis to have gone out; had a very short conversation with the negro; then fell into the altercation with Mr. Riley, whom I did not then know; after some explanations and apologies, Mr. Riley asked the prisoner if he wished to converse with me; it might have been half a minute that I talked with him—a very short time; I made the remark as I stated on Saturday, that "there were but few persons outside," on account of general conversation about its being a good case; some one, I don't know who, made the remark that there was some probability of an interference by the colored people; among those who were about at the time this was said, were Mr. Morris, Mr. Davis I think, Mr. Sewall, a colored man whom I believe is Mr. Grimes, and two or three others; am one of the editors of the "Commonwealth" newspaper.

By Mr. LUNT—Are you one of the proprietors of that paper?

Mr. DANA—I object to that question.

The COMMISSIONER sustained the objection.

To Mr. DANA—The conversation alluded to was something about the colored people taking it quietly; at the first of that conversation I was talking with the prisoner. I can recollect no other remark distinctly, except that Mr. Sewall said he hoped by all means there would be no violence. So far as I contributed to that conversation, it was that there was no preparation outside.

Marcus Morton, Jr. re-called—I know that on two separate occasions on Saturday, that Mr. Davis was recognized by the prisoner as his counsel. The prisoner was much agitated, and I went to him and told him to keep his mouth shut, and not to speak to any one as counsel unless they were designated to him as such.

Edward H. Brainard, carriage-maker, called—Know Frederick D. Byrnes; know nothing of his general reputation for truth and veracity, excepting since this examination commenced.

Charles C. Condey, builder, called—Know Frederick D Byrnes by sight; I know nothing of my own knowledge about his general reputation for truth and veracity.—Have heard a great many speak a great many speak against him as to truth and veracity.

Charles Mead, druggist, called—Live at South Boston, and know Frederick D. Byrnes; can't say that I know a great deal about his general reputation for truth and veracity.

Jeremiah S. Prescott recalled—Heard Mr. Warren testify on Saturday. I saw him in the entry, after I saw Mr. Davis on the stairs. I heard the private door open, and also that of the recess. I looked and saw the private door open, and a person come out and go into the recess. The door immediately closed. I saw the person pass back into the private door. He was absent not more than a minute. I saw Mr. Warren after the prisoner was rescued, in the passage-way. He appeared much excited. Think I also saw Mr. Neale, and think it was him that I asked if there had been a rescue.

To Mr. DANA—I knew at the time I asked him, that they had made the rescue. Should think I came here five or ten minutes before the man was carried out of the door of this room, and might have remained here two minutes after. I told a person on Saturday, in the Square—I think Simon Hanscom—that I was up stairs and saw the whole of it; did not tell him I was in the room; told him what I did tell him, because I had heard it; Mr. Hanscom and one or two others knew that I was here, and I thought I should be called upon as a witness.

Mr. Riley was the next person I saw about this business; I thought the rescue and what I saw and heard previous to it was outrageous, and I thought it my duty to tell what I knew about the matter be known; in regard to my sympathy, I would state that I was glad that the negro had escaped, but I don't hold to breaking the law; the only objection I have to the law, is the right of trial by jury; I had no idea that they were going to break into the Court room; the exclamation "take him away" was not heard by me until after the door was open.

If there had not been persons who knew and saw me, I might or I might not have told what I knew about the matter. When I met Mr. Hanscom he had a crowd about him; he was laughing, and appeared rejoiced about it.—Some one said, "There's the man who saw the whole of it;" he came to me and asked what I knew about it; I laughed at the time, and could not help laughing, as others did; Hanscom asked me questions, and tried to get me to say more about it, but knowing the source from which the questions came—that he was a reporter—I declined.

Charles Sawin re-called—to explain the position of parties when Davis made use of the expression "you'd ought to have your throats cut all of you."

REBUTTING TESTIMONY.

James H. Blake called—Have known Frederick D. Byrnes eight or ten years; have never heard his general reputation for truth and veracity called in question.

Robert M' Gill called—Have known Mr. Byrnes about seven years; have never heard his character for truth and veracity called in question; he has been a guest at my house.

Levi Whitney, Inn-holder, called—Have known Mr. Byrnes seven or eight years. Never heard his character spoken of.

Freeman L. Cushman called—Have known Mr. Byrnes since 1841, and have never heard his general reputation for truth and veracity questioned.

To Mr. DANA—Never heard a word in any form about his general character for truth and veracity discussed.

Brigham N. Bacon called—Have known Mr. Byrnes seven or eight years. Never heard his general reputation for truth and veracity questioned.

Richard Hosea called—Has known Mr. Byrnes seven or eight years. His general reputation for truth and veracity is good as far as I know.

George Woodman called—Have known Mr. Byrnes between 26 and 27 years. Know his general reputation for truth and veracity, and never heard it called in question.

To Mr. DANA—Never heard anything said against his general character for truth and veracity.

John L. Roberts called—Known Mr. Byrnes by sight a number of years, and by name only about a year. Never heard his character discussed.

Henry Gilbert called—Have known Mr. Byrnes twenty years or more. Never heard his character for truth and veracity questioned. Know many persons who know him.

To Mr. DANA—Knew him in Portland, and had occasion to make enquiries there about his character.

Nathan Hyde called—Have known Mr. Byrnes about thirty years. His general reputation for truth and veracity is good as far as I know. I never heard it questioned.

Edward J. Jones called—Have known Mr. Byrnes about eight years, and never heard his character for truth and veracity called in question.

——— *Mitchell* called—Reside in East Bridgewater.—Have known Mr. Byrnes about thirty years, and never heard his character for truth and veracity called in question. He was in my employ some years, about fifteen or twenty years ago. Since he left Bridgwater have heard of him frequently and seen him often.

Richard Nutter called—Have known Mr. Byrnes about twenty years, and never heard his character called in question. He lived as a neighbor to me in Bridgewater, know a great many who know him, and have frequently heard him spoken of.

John L. Phillips, John G. Roberts, Daniel Leland, Jr., Granville Gilbert, of Bridgwater, George W. Barker, Samuel J. Andrews, N. C. Woodwan, Levi Hayward, George W. Phillips, James H. Mitchell, J. M. Kibbe, Joseph Cochran. Robert Alden, Elisha V. Glover, George L. Gilbert, and J. G. Smith severally testified that they had known Mr Byrnes for longer or shorter periods of time, varying from three to thirty years, and had never heard his character for truth and veracity called in question—that they knew many persons who were acquainted with him—had heard him frequently spoken of—had never heard his reputation impeached in any way whatever—consider his reputation good—never heard his character for truth and veracity doubted until last Friday, since this examination was commenced, and repeated in general terms the same as all to this point.

Simon P. Hanscom, reporter for the "Commonwealth" newspaper, called—Saw Jeremiah S. Prescott on the 15th inst. Asked him some questions about the rescue, perhaps ten or fifteen minutes after it. Mr. Prescott said he saw the rescue. Saw him in a crowd and asked him to step one side and tell me what he knew about it. We walked a short distance from the crowd, and one or two others followed us.

He said to me that he saw the negroes come up the passeng -way; that the colored man who had the fugitive was met by an officer; that he (the colored man) struck the officer on the side of the head and staggered him; that the officer was afterwards struck and knocked down under the rails; that a stout negro seized the Marshal's sword and flourished it over his head. He (Prescott) said he saw the negroes go up the stairs and then go down with the man. Mr. Prescott did not appear to discriminate between what he saw and what he had heard about the matter.

To the COMMISSIONER—During our conversation, no names were called.

To Mr. LUNT—Our conversation continued about fifteen minutes, after which I think I went to the office. Am Reporter for the "Commonwealth," so much was said about the matter, after I reached the office that I can't recollect distinctly what was said about it.

An "Extra" was issued from that office on the following morning. At the office I communicated to Mr. Wright and others the story as I had heard it, and insisted that an officer had been knocked down. Mr. Wright said he was in the room, and that no officer was knocked down.

I do not say that Mr. Prescott told me *he saw* the officer knocked down. I expressed myself as being very much gratified that the man had escaped. I have'nt the slightest idea whether or not I expressed any regret at the circumstance. I might have said something about having a picture or cut of the scene made. I am opposed to breaking the law.

To THE COMMISSIONER—Do not intend to say that I was glad such means had been used to effect his escape. I should have been happy if he (Shadrach) had not been arrested at all.

To Mr DANA—Do not recollect hearing Mr. Prescott saying anything about a breach of the law.

To Mr. LUNT—Mr. Davis told me that evening, that no officers were knocked down. In consequence of the statements of Mr. Wright, Mr. Davis and others, they made up the story which appeared in the "extra."

Heard Mr. Davis say that he could see what was going on in the room, but don't recollect in what connection he made use of the expression.

To Mr. LUNT—Can't tell you the necessity of his making the remark.

[The cross-examination of this witness was not concluded when we went to press.]

[Reported for the Boston Journal.]

EXAMINATION OF CHAS. G. DAVIS,

ON THE CHARGE OF

AIDING IN THE RESCUE OF THE FUGITIVE SLAVE SHADRACH.

U. S. COMMISSIONER'S COURT—BEFORE MR. COMMISSIONER B. F. HALLETT.

TUESDAY, Feb. 25,

FIFTH DAY.

At the opening of the Court this morning, there were fewer persons in the Court room than has been on any morning since the examination of Mr. Davis commenced.

Mr. DANA commenced his closing argument for the defence by commenting at length upon the various provisions of the Fugitive Slave Law, and the improbability of a counsellor at law and a Justice of the Peace, as Mr. Davis was, acting either in concert with others or upon his own account, in forcibly resisting and breaking the law, however much he might be opposed to the existence of such law. Instead of being a person to break the law, the defendant was under double oath to maintain the law, and his sympathy for the unfortunate and degraded class to which the party escaped belonged, induced Mr Davis to leave his lucrative business and his clients, on the very busiest day of the week, for the purpose of advising with others in adopting legal and proper measures for the defence of the arrested party.

After occupying an hour and a half in discussing the various points of law applicable to the case, Mr. Dana proceeded to comment upon the facts as elicited from the testimony during the progress of the examination. He contended that it had been conclusively shown and proved that Mr. Davis was selected by the prisoner as his counsel, and was acting in that capacity only. There were no private conversations or suspicious movements on the part of the defendant, as was shown by the testimony of Mr. Riley.

The remarks made by defendant in relation to the business being "mean business," as testified to by Mr. Sawin, was intended only and simply as a private remark, and by no means to excite a spirit of rebellion. It was nothing more than one man saying to another "don't volunteer your services in hunting up fugitives, and enforcing such a law." If the question was upon resorting to a law or to force, all would take the side of upholding the law, and on that side the defendant was to be found, and there he always would be found.

The evidence that Mr. Davis did not leave the room is uniform with a single exception—the time stated by Mr. Prescott. Upon this point, the counsel urged that it was absurd, taking the whole testimony together, to believe that Mr. Davis went out of the private or easterly door, as testified to by Mr. Prescott. It was wholly impossible for Mr. Davis to have done so.

At this stage, (half past one o'clock P. M.) of Mr. Dana's argument, the Court took a recess of half an hour.

[...] unconstitutional tax is levied, you [...]

Before Benjamin F. Hallet, Commissioner.

UNITED STATES, BY COMPLAINT vs. CHARLES G. DAVIS—GEORGE LUNT, DISTRICT ATTORNEY.

Closing Argument of Richard H. Dana, Jr., Esq. for the Defendant.

[Phonographic Report, by Dr. Stone.]

May it please your Honor:

Certainly, Mr. Commissioner, we are assembled here this morning under extraordinary circumstances. I am not aware that since the foundations of our institutions were laid, since we became an independent people, since the Commonwealth of Massachusetts had an independent existence—I am not aware that a case similar to this has once arisen. I do not know that ever before in our history a judicial tribunal has set, even for a preliminary hearing, upon a gentleman of education, a counsellor of the law, sworn doubly, as a Justice of the Peace, and as a Counsellor in all the Courts, to sustain the Constitution of the United States and the laws made in pursuance thereof,—a gentleman of property, family, friends, reputation, who has more a stake in the preservation of these institutions than nine in ten of those who charge him with this crime;—who stands charged with an offence (in the construction now attempted to be put upon the statute) of a treasonable character, a treasonable misdemeanor, an attempt to rescue a person from the law by force, an attempt set up violence against the law of the land.

Therefore it is that that this trial attracts this unusual interest. It is not that, so far as this defendant is concerned, the question whether he be bound over here, or the District Attorney takes his case directly to the Grand Jury, can make to him the slightest difference in the world; but because the decision of this tribunal, though only preliminary, will have great effect upon the community, and will be carried throughout the United States. It is because of the political weight attached to it, that such anxiety is felt for the result. For the simple rescue of a prisoner out of the hands of an officer, is a thing that occurs in our streets not very unfrequently, and often in other cities. It might have occurred up stairs, and not have attracted a moment's attention.

Who, Mr. Commissioner, is the defendant, at the bar? I have said that he is a Justice of the Peace, sworn to sustain the laws, a counsellor of this court and of all the courts of the United States in this State, sworn doubly to sustain the laws.—He is a gentleman of property and education, whose whole professional reputation and emolument depend upon sustaining law against force; a man whose ancestors, of the ancient Pilgrim stock of Plymouth, laid the foundations of the institutions which we enjoy. He has at this moment so much interest in the way of personal pride, historical recollections, property, in family, reputation, honor and emolument in these courts—so much at stake as to render it absolutely impossible to believe, except on the strongest testimony, that he should be guilty of the offence charged against him at this moment.

The defendant has been charged with the meanness of instigating others to an act he dares not commit himself, of putting forward obscure and oppressed men, to dare the dangers and bear the penalties from which he screens himself; meantime holding up his hand and swearing to obey the laws of his country which he is urging others forward to violate.

Since, then, my friend has done me the honor to ask me to appear for him before this tribunal, from among others so much better qualified, I feel that I am placed in circumstances calling for some allowance, some liberty for feeling and expression.—We think ourselves happy that in this State trial, this political State trial, we appear before one who has been known through his whole life as not only the advocate of the largest liberty, but the asserter and maintainer of the largest liberty of speech and action at the bar, in the press, and in the forum, carrying those ideas to an extent to which I confess, with my comparative conservatism, I have not always seen my way clear to follow. Therefore I shall look for as large a liberty as the law will allow me, in addressing myself to this court; in bringing forward all considerations, in suggesting all possible motives, in commenting upon all the circumstances that lie about this case. At the same time I shall expect from the person who sits clothed with the authority of an Executive whose will is more powerful than that of any sovereign in the civilized world, except the Czar of the Russias—I shall expect from him no unnecessary interruptions, no extraordinary appeals, no travelling out of the usual course of a simple judicial proceeding.

Complaint, Arrest & Plea.

Why is it that the defendant stands here at this bar a prisoner? How is this extraordinary spectacle to be accounted for? I beg leave to submit that the whole history is simply this. There has been a law passed in the year 1850, by the Congress of the United States, which subjects certain persons, colored men, if they be fugitive slaves, or whether they be or not, subjects them to be arrested and brought into Court, to have the question of their liberty and that of their seed forever, tried by a so called judicial tribunal. Those persons are mostly poor. They belong to an oppressed class. They are the poor plebeians, while we are the patricians of our community. They are of all people in the world those who most need the protection of the courts of justice. I think the court will agree with me that if there is a single duty within the range of duties of a counsellor of this court which it is honorable for him to perform, and in the performance of which he ought to have the encouragement of the court, it is when he comes forward voluntarily to offer his services for a man arrested as a fugitive slave. Therefore it is that I think it somewhat unfortunate that the District Attorney should have thought it necessary to arrest counsel. If there be a person against whom no intimidation should be used, it is the counsel for a poor, unprotected fugitive from captivity. The question is, whether a man and his posterity forever, the fruit of his body, shall be slave or free. It is to be decided on legal principlss. If there is a case in the world that calls for legal knowledge and ability—that calls for counsellors to come in and labor without money or price, it is a case like this. I think it a monstrous thing, unless it be a case beyond doubt, that counsel should have been selected to be proceeded against in this manner.

I take the facts to be these: Mr. Davis, being a counsellor of this Court, and possessed of no small sympathy for persons in peril of their freedom, when it was known that a person claimed as a fugitive slave was arrested, and in a few hours. perhaps, to be sent into eternal servitude, Mr. Davis steps over to my office and suggests to me that we offer our services as counsel. He leaves his business, which is large, while five courts are in session in this building. He sits here that whole Saturday forenoon by the prisoner, to whom he is recommended by Mr. Morton. He is twice spoken of to Mr. Riley by the prisoner, as one of his counsel. He sits from eleven to two o'clock, absorbed in this case, his feelings necessarily excited, (and I should be ashamed of him if they were not excited) but his intellectual powers devoted to the points of law in this case, and your Honor knows they are various and new. By the courtesy of the Marshal, the counsel were permitted to remain here, because the Marshal had not yet determined where to keep his prisoner. They remained until the time for the prisoner's meal. When the business is over they leave. Some one must go out first, and somebody must go out last. It is nothing more nor less than the old rule of "the Devil take the hindermost." Mr. List leaves the Court-room. Mr. Warren goes out. All the officers are to go to dinner, and the door is to be opened and closed each time. Dinner is to be brought in.—Twenty times that door is to be opened.

In the mean time about that door is collected a small number of persons of the same color with the person at the bar, very likely, perhaps, to make a rescue, some advising against it, and some for it, with considerable excitement. Mr. Davis slides out of that passage way and goes to his office.—Mr. Wright is prevented from going by the crowd. Not a blow is struck. Not the hair of a man's head is injured. The prisoner walks off with his friends, right out of this Court House, and no more than 20 or 30 persons have done the deed. Three men outside of the door could have prevented the rescue. Mr. Riley did not suspect it. Mr. Warren did not suspect it. Mr. Homer did not suspect it. Mr. Wright did not suspect it. Nobody suspected it. The sudden action of a small body of men, unexpected, and only successful because unexpected, accomplished it. He is out of the reach of the officers in a moment and there's the end of the whole business. No premeditation! No plan! Counsel knowing nothing about it! Nobody suspecting it and the whole thing over in one minute!

But, may it please the Commissioner, the law is violated—the outrage is done. This is a case of great political importance, and the deputy Marshal thinks it his duty (I think in rather an extraordinary manner) instantly, before any charge is made against him, before any official inquiry is started, to issue a long affidavit, sent post haste to every newspaper, and hurried on to Washington. Congress in session—a delicate question there—Northern and Southern men arrayed against each other. Then comes an alarm. Then the Executive shrieks out a proclamation [illegible]

A standing army is to be ordered to Boston. All good citizens are to be commanded to sustain the laws. The country thinks that mob law is rioting in Boston—that we all go armed to the teeth. The Chief Magistrate of fifteen millions of people must launch against us the thunders from his mighty hand.

In the meantime, we poor innocent citizens, are just as quiet, just as peaceable, just as confident in our own laws, just as capable of taking care of ourselves on Saturday evening as on Friday morning. Only some frightened innocents, like the goose, the duck and the turkey in the fable, say the sky is falling, and they must go and tell the king!

But we can all see now that there was too much alarm. We begin already to feel the reaction. A state of things has been created over this country entirely unwarranted by the circumstances. And I trust that the Commissioner will be able to say to the country, say to His Excellency the President of the United States, say to the world, that nothing of this sort has occurred; that there has been no preconcerted action; that the Marshal cleared his room, and every body went out peaceably; that nobody expected the rescue; that there was no crowd in the court room; but the blacks, feeling themselves oppressed and perilled by this law, standing at that door, behind which their friend and companion is held a prisoner, rush in, almost without resistance, carry off their prisoner, and not a blow is struck, not a weapon drawn, not a man injured. That is the end of it. There is no need of standing armies in Boston! And, above all, we trust that the Commissioner will be able to say to the world, to the President, and to Congress, that this effort was the unpremeditated, irresistible impulse of a small body of men, acting under the sense and sight of oppression, and impending horrid calamities, against the advice of some of their own number; and that no gentleman of education, no counsellor of this court, sworn to obey the law, has instigated these poor men to its overthrow. Massachusetts is not in a state of civil war, and her most valued citizens are not engaged in overturning the foundations of civil government.

Why should these proceedings have taken place at all? What is the evidence? The learned District Attorney thought proper to suggest to the Court that there was further evidence which might be presented in another stage of this proceeding. That, I am sure, fell with as little weight upon the mind of the Commissioner as it would if we, on the other hand, had said, as is the fact, that we have a large amount of evidence that might yet be presented in behalf of Mr. Davis. This is not a game of brag! It is not upon evidence that is not here, but upon evidence that is here, that this case is to be decided. Here has been mortified pride, here has been fear, here has been the dread spectre of Executive power, stalking across the scene, appalling the hearts, and disabling the judgments of men. Excited men suspect everybody. Every person who ever attended a public meeting is suspected. A political party is to be put under the ban. There is nothing so rash as fear. There is nothing so indiscriminating as fear. There is nothing so cruel as fear, unless it be mortified pride—and here they both concurred.

Instructions come from a distant Executive power that knows nothing of the facts. And the fear of that power and patronage is the reason, may it please the Commissioner, why suddenly, on Saturday or Sunday, before the subject can be examined and the truth ascertained, a warrant is got out against a person of the character and position of Mr. Davis. But when we look at things in their natural light, when there is a calm investigation of the facts I think the Government will see and regret its rashness and delusion.

I understand, may it please the Commissioner, that there is to be a great deal done in this case of an unusual character. We have been threatened with the reading of newspapers, and public meetings and political principles are to be charged as treasonable. Yes! political considerations are brought to bear. We cannot tell what limit is to be put to this. Therefore, not knowing what is before me, having no ordinary rules of proceedure to guide me, the Commissioner will allow me to try to anticipate the attacks as well as I can. For having had it intimated that the argument will not follow legal evidence, but extracts from newspapers—

Mr. Lunt. That is very strong. I have offered you every thing of that kind that I have to say.

The Commissioner. The gentleman proposes to read as part of his argument, this article from the newspapers.

Mr. Dana. Yes, that which is not legal evidence. I cannot object to it now. When it is offered I have no doubt it will be properly met by the Commissioner.

I say, not knowing what is to come upon me, I must take a pretty wide margin. In that view of the case, it will not be improper if I state what I understand to be the true position of Mr. Davis, with reference to the principles involved in this case.

May it please your Honor, we are not subjects of a monarchy, which has put laws upon us that we have no hand in making. I do not hesitate to say, here, that if the act of 1850 had been imposed upon us, a subject people, by a monarchy, we should have rebelled as one man. I do not hesitate to say that if this law had been imposed upon us as a province, by a mother country, without our participation in the act, we should have rebelled as one man.

But we are a republic. We make our own laws. We choose our own lawgivers. We obey the laws we make, and we make the laws we obey. This law was constitutionally passed, though not constitutional, we think, in its provisions. It is the law until repealed, or judicially abrogated.

Who passed this law? It was passed by the vote of the representative of our own city, whom we sent there by our own votes. It was advocated by our own Senator. It was passed by northern votes. Where is the remedy? It strikes me that the statement of the case shows where the remedy is. It is in the hands of the people. It is not by standing behind and urging on poor men to put themselves in the cannon's mouth. It is political courage that is wanted. Courage shown in speech, through the pen, and through the ballot box.

But be it known to all men, that all I have said is on the idea that this is a repealable law. If it is to be said to us that this is a part of the organic law, sunk down deep into national compact, and never to be repealed, then neither you nor I can answer for the consequences. But now we can say that it is nothing but an act that may be repealed tomorrow. Take from us that great argument, and what can the defendant and myself do? What can the defendant say to discourage colored men from the use of force? You take from him his great means of influence. I never have been one of those, and I think the defendant has never been one of those, who would throw out all their strength in denunciations against Southern men who are born to their institution of slavery, and pass over those Northern men who volunteer to bring this state of things upon us.

But as a citizen, within constitutional limits, addressing his fellow citizens at Faneuil Hall, (where I think we have still a right to go) discouraging his fellow citizens from violence, writing in the newspapers and arguing in the courts of law to the same purpose, saying to the poor trembling negro I will give you a habeas corpus; I will give you a writ of personal replevin; I will aid in your defence; there is no need of violence. That is the position of the defendant. If he held any other position, if the defendant had made up his mind that here was a case for revolution, that here was a case for civil war and bloodshed—if I know any thing of the spirit of the defendant, he would have exhibited himself in a far different manner. He would have resigned his position as a counsellor of this court with all its profits and honors; he would put himself at the head instead of urging on from behind a class of ignorant, excited men, against the execution of the laws.

For he knows perfectly well, an educated man as he is, who has studied his logic and metaphysics, and who is not unfamiliar with the principles of the social system, that an intentional, forcible resistance to law is in its nature revolution. And I take it, no citizen has the right forcibly to violate the law, unless he is prepared for revolution. I know that these nice metaphysical rays, as Burke says, descending into the dense medium of common life, are refracted and distorted from their course. But an educated man, with a disciplined mind, knows that he has no right to encourage others to forcible resistance, unless he is ready to take the risks of bringing upon the community all the consequences of civil war. We talk about a higher law on the subject of resistance to the law. And there is a higher law. But what is it? It is the right to passive submission to penalties, or, it is the active ultimate right of revolution. It is the right our fathers took to themselves, as an ultimate remedy for unsupportable evils. It means, war and bloodshed. It is a case altogether out of law. I do not know a man educated to the law that takes any other ground.

I suppose your Honor did not misapprehend my last remark and that no one did. When I said resistance to the law, I did not mean to include resistance for the purpose of raising a constitutional issue. If an unconstitutional tax is levied, you refuse to pay it and raise the constitutional question. This right seems to be lost sight of. Persons seem to think we are to obey statutes and not the constitution. I understand that the duty to the constitution is above the duty to the statutes. And therefore I say by resistance to the law, I mean the forcible resistance to the law for the purpose of overcoming it, and not that resistance which consists in raising a constitutional issue.—For this is within the power, nay, it is sometimes the duty of a citizen. I do not know a position in which a person does a greater good to his fellow citizens than when he does, as John Hampden did on the question of ship money, raise, by refusal to obey, the constitutional issue. And in doing this, he ought to have the approbation of the Courts and their ministers, and of every person true to the constitution and the laws.

At the same time, that it is important to maintain all these principles, which are the principles of the defendant, I also think this is a season when we must be very careful that certain opposite doctrines are not carried too far. I think it is a time, this day, when it becomes a judicial tribunal to see to it, that this extraordinary combination of executive power and patronage, this alarm and this anxiety at head quarters, does not lead to a violation of private rights and personal liberty. I think there is a pressure brought to bear against the free expression of popular opinion, against the exercise of private judgment, a pressure felt even in the courts of law, intimidating counsel, overawing witnesses, and making the defence of liberty a peril. There is the pressure of fear of political disfranchisement, of social ostracism, which weighs upon this community like a night-mare. We feel it everywhere. We know that we make sacrifices when we act in this cause. We feel that we suffer under it. And if this course is persevered in, I believe that if a man stands at that bar charged with being a fugitive slave, he will find it difficult to obtain counsel in this city of Boston, except from a small body of men peculiarly situated.

I think that two years ago no man could have stood before this bar, with perpetual servitude impending over him, but almost the entire bar would have come forward for his defence. No man would have dared to decline. But because of this pressure of political and mercantile interests, it is said that Henry Long could not obtain counsel in New York. His friends sent to Boston to ascertain whether there was any man here willing to brave public feeling by acting as a counsellor in a case of slavery. I do believe that this danger is to be regarded. For there is as much servility in democracies as in monarchies. I was struck with the remark made by the Earl of Carlisle, in his late letter, that there is in the United States an absolute submission to the supposed popular opinion of the hour, greater than he ever knew in any other country in the world." This is something in which no American can take pride.

The history of democratic governments show that they may be as arbitrary as any absolute monarchy. Venice, and Athens, and Paris have, under democratic forms, been the standing illustrations of tyranny and arbitrary rule the world over. Those are free governments, in which there is a government of just laws, whether wrought out through a mixed government, as in England, or whether wrought out by the people themselves, cast into representative forms. And now we see before us the anomaly, the mortifying contradiction, that it is Great Britian, and not the republic of the United States, with our venerated Declaration of Independence, where the great principle of Liberty and Fraternity are practically carried out. I do not mean to reflect upon any person or persons south or north of a certain geographical line. Our ancestors have eaten sour grapes, and their childrens' teeth are set on edge. We are all under the same condemnation. We are all responsible for these laws—for slavery in some form or other. Our constitutianal compact makes us responsible, and we cannot escape from our share of the crime and the wrong.

But I must leave these generalities and pass to the particular points of this case. This is the first case of its kind that has occurred. The decision in this case by the Commissioner, though not matter of precedent, yet goes to the profession, the press, and into the private records of the country. Therefore we may be excused if we pay some considerable attention to the points of law involved.

In the first place, it should be bourne in mind that a fugitive slave is not a criminal.

A few years ago, it was held in Massachusetts that the pursuing of slaves was criminal. I thank God that it is not yet decided that the escaping from slavery is criminal. It is a mere question of property under this act. This law has recognized certain property in slaves in the free States. It is a mere question of property. The Southern man has certain property in his slave. That property we do not here recognise. But if the property escapes and he pursues it, it is to be recognised in this court. Consequently, when a Southern man comes here and seizes a person as his property, he takes him at his own risk, a risk which every man takes in seizing anything as his property. If he seizes the wrong property, any person who owns it may resist him, or his officer armed with a warrant. This has been ruled in various cases.

Your Honor recollects in the 8th Pickering the case of the Commonwealth vs. Kennard. There the writ was placed in the hands of the officer to go and attach some property of the defendant. He attached certain property which he thought belonged to the defendant. He showed his warrant, but the true owners put him neck and heels out of the house. They were indicted, but the Court sustained them in their act.

In a civil action, if the wrong person, the wrong horse, or the wrong slave is taken, then the owner of the property may defend it, or the man may defend himself if he chooses. But there is a different statute on the subject of interfering with the process of the courts, interfering with judicial processes, for which this respondent is not held to answer. Whenever this respondent is held to answer for resisting judicial processes, then those other questions may be raised.

The Constitution says that any person *charged* with crime, and escaping, shall be delivered up.—But in the case of the Fugitive Slave, it carefully alters the phraseology. It does not say that any person *charged* with being a Fugitive Slave shall be surrendered, but any person who *is* a Fugitive Slave. In the one case the *charge* is the only material fact, and is moved by a record. In the other case, which is a question of property, the fact of property is the foundation of the proceeding. So, in this act of 1850, the 6th Section does not provide that any person who *claims* a Fugitive Slave shall have the right to arrest him, but any person who *is the owner* of a Fugitive Slave, may arrest him. So, in the 7th Section, the penalty is not inflicted for rescuing a person who is claimed as a Fugitive Slave, but for rescuing a person who is a Fugitive Slave. These provisions are in analogy with the law of property, and the arrest of persons and property in all other cases. As bad as this statute is, it is not quite so bad as its friends in this case would make it.

The next consideration is that it is not necessary that the claim should be made by virtue of legal process. The owner or his agent may arrest the fugitive *with or without process*. The offence is openly committed, and the penalty is the same whether the rescue is made from the owner without process, or from the officer having process. This fact, with the fact that there is a general statute relating to the offence of obstructing judicial processes, shows that this statute assumes the fact of property and escape to be true, and applies only to cases in which they shall prove to be true.

If this is not so, what is the result? If a man claims another, without process, by putting his hand on his shoulder, though the man may be as free as you or I, if he resists, or his friends aid him in resisting, the offence is committed. A man claimed as a Fugitive Slave, has been rescued or aided in his escape. You cannot refuse to deliver up a colored boy or girl born in your house, of free parents, to any man who knocks at your door and claims the child, with or without a warrant, without incurring the penalties of this act. This monstrous construction can never be admitted. I beseech the Commissioner to reconsider his intimated opinion on this point, and hold the Government to preliminary proof, in the outset, that the person rescued was a slave by the law of Virginia, was the Slave of the man who claimed him, and was a fugitive from that state of Slavery.

What evidence has there been of any of these facts? There has been no evidence offered that the prisoner was a slave by the law of Virginia!—There has been no evidence offered that he was the slave of Mr. Debree! There has been no evidence offered that he was a fugitive from a state of slavery! Mr. Riley's return upon the warrant, stating that he had arrested "the within named Shadrach" was admitted as evidence. I solemnly protested against the reception of the return as evidence in a criminal proceeding between other parties; but it was received, and for a while held to be conclusive. But, in answer to my question, Mr. Riley replied that he did not know that the man he arrested was the man named in the warrant, and how could he know it? This nullified the return, and the government had no evidence. The District Attorney saw this, and rising in his seat, in a threatening tone says to Mr. Riley, "I warn you, sir, not to give that testimony!" The testimony was true, and it was admitted by the court. Why was Mr. Riley warned? He was was warned for private reasons, as an official warning, by the agent of the Executive to one of its servants.

Mr. Lunt—I deny that it was a private warning. It was public, and for proper reasons.

Mr. Dana—It was for private, or secret reasons, not given, not apparent; some political or governmental terror, known only to the parties. There is no escape from this. The bar saw it. The whole audience saw it. It is graven with a pen of iron and laid up in the rock forever.

All evidence of identity having failed, the government is driven to its last shift. Col. Thomas is called in, and he testifies that the agent of Mr. Debree said to him, in the Court-room, when the prisoner was brought in, "That is my boy!" This is hearsay evidence upon hearsay evidence. It is monstrous! Yet on this slender thread of illegal testimony hung all the evidence of the facts of identity, slavery and escape. If it i enough to prove that the man rescued was the man in custody, and upon whom the Court was sitting in fact, no one denies it. But if it be necessary to show that the man in custody was the man named in the arrest, or that he was a slave, and a fugitive slave, there has been no competent evidence of any of those facts, and no evidence at all but of one of them.

This man was not rescued from the Court. The Court had adjourned. The Marshal had chosen to make the Court-room a slave jail. The offence would have been the same in the eye of the law, if he had been rescued from the house of the agent, without a warrant, in the streets, or in a railroad car.

I have nothing more to submit to the Court on the subject of the law applicable to this case. I will now call your Honor's attention to the facts in proof.

[Mr. Dana then proceeded to an analysis of the evidence. The points in the evidence which he presented were these:

1. That Mr. Davis was one of the prisoner's counsel, and was recommended to the prisoner as such by Mr. Morton, and was twice named by the prisoner as his counsel to the Deputy Marshal.

2. That Mr. Davis did not leave the court-room from the opening of the Court until just at the moment of the rescue, and while in the court-room was busily engaged in the examination of the documents offered in proof, the other evidence, and the points of law.

3. That there was no suspicion that a rescue would take place until the moment it occurred. The officers at the door did not suspect or report any such attempt. One of the Deputy Marshals passed through the crowd twice, not more than two minutes before, and suspected nothing. Mr. Riley testifies that it was a surprise upon them all. Mr. Homer and Prescott, who stood in the stair-way, a few feet from the door, did not anticipate a rescue until the door was forced open. Five Courts were in session, and persons were passing up the stairs, and through the passage-way, to the last moment, and suspected nothing. The defence of the Marshal against the charge of gross negligence, is the justification of Mr. Davis.

4. Mr. Davis in passing out of the door, did nothing unusual, and when he arrived there, anticipated nothing serious being attempted.

5. The only other evidence was from a man named Byrnes, who unfortunately holds the office of Deputy Marshal, who thinks he recognized Mr. Davis' voice in the entry, calling out, "Take him out, boys!" But the same cry was uttered several times, and Mr. Homer and Mr. Hutchins, who saw Mr. Davis, say it did not come from him, but from the negroes; and Prescott attributes it to the negroes. Four men were nearer to Mr. Davis than Byrnes was, and all of them exculpate Mr. Davis. And Byrnes is confessedly hard of hearing, and not particularly familiar with Mr. Davis' voice. Moreover, his character for truth and veracity is impeached. [Mr. Dana then examined the evidence as to the veracity of Byrnes.]

Such, please your Honor, is all the evidence against the Defendant. It is reduced to an exclamation on the stair-case, sworn to, not very confidently, by a deaf man, who was too far off to hear well, at any rate of hearing, denied by three good men who were near and had good hearing, while a

Then comes an alarm. Then the Executive shrieks out a pro[illegible]

sioner.

dozen voices were calling out the same thing at the same moment; the moment, too, one of alarm and intense excitement on the part of the officers. On such evidence, who can be safe? Who would dare to act as counsel in any case involving public excitement, with a suspicious and angry government watching every motion, served by officers of broken down reputations.

Please your Honor, I have done with the testimony. On what principles of proof is the judgment to be made up?

The Constitution requires that no person shall be arrested without a warrant supported by oath. The Act of 1789, requires these proceedings to be conformed to proceedings in the State Courts. In Massachusetts it has always been required that the complainant shall be first examined on his oath.—In this case there has been no examination under oath. Mr. George Lunt, "so help him God!" has sworn that Charles Gideon Davis, Counsellor of this Court, has aided in rescuing the prisoner. Yet, so help him God! he knew nothing about the facts. He has made oath to the form of the Statute, and no more.

Mr. Lunt here intervened and said it was the custom for the District Attorney to swear to complaints on hearsay evidence.

Mr. Dana—But this is not stated as hearsay. It is sworn to as a fact. Charles Gideon Davis "*did* rescue," and the above named George Lunt made oath to the *truth of the facts*. As a question of conscience, I leave it with that officer to settle with himself. As a matter of law, as a matter of vital importance to every citizen, as a great question of constitutional law, I earnestly protest against the issuing of warrants on the mere formal oaths of official persons, representing a party in the proceedings, and utterly ignorant of the facts they swear to. If it be a custom, it is more honored in the breach than in the observance. But I deny that it is the custom. Complaints are sworn to by persons knowing the facts, always in the State Courts, and in my experience in the Federal Courts.

In closing my prolonged remarks, let me recapitulate our case. Mr. Davis is not the man to urge others to acts he dares not commit himself. He believes this dreadful statute unconstitutional, a violation of our moral sense, a great breach upon the safeguards of freedom every where. Yet he will oppose it legally, by speech, by the pen, and in Court. He will not yield to it any voluntary obedience, but he will not use force, or counsel the use of force to set aside the laws. He rejoices that Shadrach is free. Every right minded man rejoices that he is free. Sober second thought teaches him and all of us that violent counsels are weak counsels. Better had it been for the cause of freedom, if, when the Marshall called out to shoot the prisoner, some armed minister of the law had shot dead the unarmed, unoffending man. Better had it been for him and the cause of those like him, if John H. Riley, instead of flying to the window, had plunged that sword to the hilt in the heart of the captive. Better if this temple of justice, which has already been turned into a slave jail and a slave market, had also been made the shambles and the grave!

While we uphold the public peace and the dignity of all laws, let us regard with tenderness and consideration that poor class of oppressed men, our negro population, on whom the statute falls with the terrors and blackness of night. When one of their number, by his industry and abilities has raised himself to the dignity of a place in this bar, it was with indignation I heard him insulted yesterday on the stand, by an officer of this court, who pointed him out, in giving his evidence, as "the little darkey lawyer." While I rejoiced at the rebuke administered to that officer from the bench, it was with deep regret and mortification that I saw the representative of the government lead off the laugh of the audience against him.

Mr. Lunt—This is false.

Mr. Dana—Do you deny you did so? It was seen and noticed by us all. I spoke to you at the time.

Mr. Lunt—I only smiled. I cannot always control my muscles.

Mr. Dana—I am sorry you could not control them on this occasion. It led off and encouraged others, who take their cue from persons in high stations.

The doings of these last few days are now part of history. If there has been a hasty and needless arrest of a respectable gentleman; if counsel have been intimidated; or witnesses threatened; if liberty of speech and action have been perilled; if the dignity and duty of office have been yielded to the unreasonable demands of political agents, of an misinformed Executive,—the Inquest of public opinion is to sit upon the whole transaction, and it will be known to the world. *Proximus ardet Ucalegon!* There are revolutions in the wheel of fortune. There are tides in the affairs of men.

Let us hope that your honor will be able to set this occurrence in its true light. A sudden, unexpected, unpremeditated action of a group of excited men, and successful because made unexpected. And that no sworn councillor of this Court forgot, even in the excitement of the rescue of a slave to his freedom, by his own flesh and bone, the duty he owes personally to the Courts and the law.

OPINION OF COMMISSIONER HALLETT.—MR. DAVIS DISCHARGED.

WEDNESDAY, Feb. 26.

SIXTH DAY.

The Commissioner came in at quarter past ten o'clock this morning, and immediately proceeded to deliver the following

OPINION.

The time which this hearing has occupied, the elaborate and extended defence, and its important bearing upon the community at large, would seem to require that the reasons for the decision to which the Commissioner has come, should be distinctly and fully stated.

The defendant is charged with the offence, under the Act of Sept. 18, 1850, of directly or indirectly aiding, abetting or assisting one Shadrack to escape, when under arrest as a fugitive from service, and in the lawful custody of the Deputy Marshal, by force of a warrant, pursuant to the authority given by that Act.

The construction of the Statute as to the form and extent of proof required, that the person under arrest was a fugitive within the meaning of the Constitution and of the Act, and owed service to the claimant, will become of great importance in a trial for an offence under the Statute. The ruling here is only in the case of a preliminary inquiry and in the absence of rebutting testimony, and I can entertain no doubt that for all the purposes of this examination, the person arrested and rescued was so held, pursuant to the authority given by that Act, and that his rescue was a lawless act of violence by all who were directly or indirectly aiding, abetting or assisting therein. Was the defendant so aiding, abetting or assisting?

The testimony bearing upon this issue, relates, mainly, to his expressions before he left the Court room, where the person arrested was in custody, and his acts when he passed out of the door, and an entrance was forced by the rioters. I will consider them separately.

It is proved by two witnesses that before the adjournment of the Court by Mr. Commissioner Curtis, the defendant went up to the officers who then had the prisoner in custody for examination of the matter to be heard, and after inquiry of one of them whether the other was a Southern man, deliberately said to the officer who was known to him then to be in the discharge of his duty, "It is a d——d, mean, dirty business."—I repeat the language only because it is necessary to do so. The defendant, as counsel in his own case, put the question to one of the witnesses in this form: "Did I not say that it was a d—d, small, dirty business *you* were engaged in?" The witness negatived the personal application of the remark, but the question, as put, must be taken as an admission that the expression was used in its offensive form; and it was addressed to an officer when in the discharge of a legal duty, and in open court.

The Counsel for the defence in his argument, has dwelt upon the position of his client as a citizen, and a counsellor, and has intimated that the District Attorney should not have subjected him to this examination on that account, but should have waited for the meeting of the Grand Jury. I entirely concur in the reply of the Attorney to that suggestion, that the higher the position the more amenable to law; a consideration peculiarly applicable to the alleged offence in this case, of perverting, in the minds of the ignorant and excitable, a sentiment of philanthropy into an open violation of law.

The defendant has also personally desired the Commissioner to take notice of the fact that he is a Counsellor of this bar, and that he was at the time, acting as counsel for the person under arrest. I regret to take notice of that fact in such a connection, for I must also take notice of another grave fact bearing upon his duties in that relation, viz., that in his office as a Counsellor at Law he was sworn to support the Constitution of the United States. Under that Constitution, and until changed by legislation or an amendment of the Constitution, or pronounced void by the proper tribunal, or overthrown by revolution, this law, and all laws of the United States made in pursuance of the Constitution, "shall be the supreme law of the land," and no officer, in or out of Court, is to be hindered, obstructed or insulted in the lawful execution thereof. It is to be regretted that the officer so addressed, did not communicate it to the learned Commissioner who then occupied this bench, and who would have taken the proper means to correct it.

The other language proved to have been uttered and re-affirmed in the Court room (viz: that the officers of the law ought to have their throats cut) was spoken after the Court had adjourned; and however reprehensible it may be, it is like the preceding expression, to be considered in this case, only in relation to and connection with the subsequent acts of the defendant. The defendant has also volunteered the statement in this Court, when called as a witness in the preceding examination, that he was glad that the prisoner was free, and when further questioned, he left it unexplained whether that opinion also embraced the unlawful means that had been used.

These facts have a legal bearing upon the *animus*, the wilful intent with which any act may have been done, by the defendant to aid in the rescue; and I should fail in the duty of a magistrate at this time, and under all the circumstances surrounding this examination, to permit to pass unrebuked any manifestation of a resistance to or contempt of legal process, especially when coming from intelligent citizens and men in official positions, whose countenance or encouragement may have involved, and may again involve, the excitable and the less informed in an open violation of law. At the same time there is a plain distinction as to the penal consequences, between a moral and a legal aiding or abetting; and holding throughout these examinations, as I trust I may be enabled to do, an impartial as well as a firm hand, care shall be taken not to confound an indiscretion or a moral perversion, or any mere expression of opinion, however gross, with a wilful act constituting legal guilt. I fully recognize the doctrine suggested in the defence, of the largest liberty within law, and also the right of the people to make or amend constitutions and laws, by all constitutional means or reserved powers

The counsel for the defence, in addition to his forcible argument for the discharge of the party accused, has urged upon the Commissioner the importance of having it now made known abroad, that there has been no concert, no plot, and no preconceived resistance to law among us, and that it is not men of intelligence, of families, and of some personal stake in society, who have put the ignorant negro forward and stood behind him, in defeating by force the due course of legal process in our courts. Upon this public appeal here made, I am constrained to say that I am wholly unable to come to that conclusion. But, on the whole view of the matter as presented here and elsewhere, this act of lawlessness which has startled the country and called forth the timely proclamation of the President, who is sworn to "take care that the laws be faithfully executed," (not merely because it is a breach of law, but because in its political aspect it bears upon the ties that bind together the Union;) is the legitimate consequence, the practical application of the doctrines and teachings of a portion of our fellow-citizens in regard to the enforcement of a particular law, which have been openly and secretly promulgated, since that enactment became a law of the land.

Applying that test to the evidence in this case, all the circumstances which surround the rescue, and the manner in which it was accomplished, in the Court House, surrounded by a multitude, and in our crowded streets, without a hand raised except the efforts of the few officers occupying the Court room, to arrest its inception or progress, indicate a preconcerted violation on the part of those who incited, encouraged, or aided in that rescue. If the result hereafter shall be a timely interposition of the municipal police, and a calmer and wiser appreciation of the duty of every citizen not to resist himself nor permit others to resist a law which he can in no wise be called upon to aid or execute in his private capacity, provided those who may happen to be charged officially with its enforcement are not obstructed by violence, a salutory influence will be produced here and throughout the country.

But so far as the defendant is here proved to have done any act, there is no evidence which connects him criminally with a preconcerted plan of rescue; and I take pleasure in adding that the conduct of the defence by the learned counsel, and his testimony and disavowals, have greatly aided me in coming to that conclusion.

On this preliminary point of the evidence I do not find an aiding or abetting within the provisions of the statute. But, in connection with what immediately followed in the passing of the defendant out at the door, the exclamation supposed by one witness to have come from him, his position and his hand upon the door, immediately followed by the rush of the rioters who surrounded it, and the absence of all evidence of attempt on the part of the defendant to prevent the rescue, it presented, on the part of the evidence for the prosecution, a strong case of probable cause, that made it the duty of the District Attorney to bring the party to an examination; a duty in the vindication of the laws which that officer has performed in anticipation of the direct instructions of the President's Proclamation, with a vigilance and fidelity honorable to himself, and giving assurance to the country that the violators of law here will not go unpunished. But in the view I take of a preliminary inquiry in this form, and especially where not only the evidence that would come before a Grand Jury, but the defence is gone into, testimony stronger than probable cause should appear, in order to hold the party to a trial.

Then is that proof found in the acts of the defendant as he passed out of the door, in themselves, or in their connexion with his preceding declarations and conduct?

In passing upon this point I lay out of the case the testimony tending to impeach the credibility of the principal witness, F. D. Byrnes. In a preliminary examination, unless such testimony is of a very conclusive character, it cannot have great weight, because it would not be presented before a Grand Jury, and peculiarly belongs to a Trial Jury. In the present case, however, if the issue turned on that point, I should have no hesitancy in deciding that the impeachment has failed to substantially affect the credibility of the witness. Ten witnesses, many of whom have either had or heard of personal difficulties with the witness, testify more or less against his credibility; but, with two exceptions, none of them could name any person who had called it in question. Under some circumstances this may well be received as proof of a reputation so notorious as to make it difficult to point out individual sources of opinion; but not so when the impeachment is met, as in this case, by an array of testimony in support of character, derived from intelligent and observing witnesses, engaged in a variety of active occupations, extending over a period of some thirty years, in which they have more or less known the witness, and very many who do know him, and who distinctly negative any such reputation. Twenty-nine witnesses have been called to rebut the impeachment, and the weight of the testimony is manifest.

Taking the testimony of Byrnes, then, as it stands, as fully entitled to belief, does it satisfactorily prove that the exclamation he heard in the struggle at the door, just after the defendant passed out, viz: "take him out, boys —take him out," came from the defendant? The witness saw the defendant standing near the door on the outside, but cannot say that he saw him or that he saw his lips move when he heard the exclamation. The witness was busily engaged with and in attending to Mr Wright at the time, and all the evidence shows that there were other simultaneous voices and like cries, when the rush was made at the door upon the egress of the defendant. The witness, who did not seem disposed to press the point beyond his distinct recollection, did not attempt to swear with positiveness; and though on the cross-examination his opinion that the voice was that of the defendant was brought out, it could not, if objected to, be admitted to go to a jury, and therefore ought not to be weighed here. One other reason which the witness gives is, that it was not the voice of a black man, and he saw no white man outside except the defendant. But this is rather an inference than a fact, and less reliance is to be placed on it from the circumstance of a partial deafness of the witness. Sawin testifies to hearing the words "take him out," &c., but cannot say they came from the defendant. If the defendant uttered that expression, there could be little if any doubt of his participation in the rescue; but taking the indirectness of the testimony in its support, and the evidence for the defence which tends to show that it could not have come from the defendant, I do not find it sufficiently proved.

The testimony of J. S. Prescott, (who is to be commended for disclosing to the proper officer his knowledge of the facts that came under his notice,) in one stage of the investigation, had an important bearing on the defendant. If, in anticipation of a rescue, he communicated with the rioters outside just before the rush, and then entered the Court Room, or subsequently passed out in the manner proved, it would supply to some extent the connection now wanting in the evidence. But the witness, if not mistaken in the identity of the defendant, states that at the precise time he saw him in the passage-way, he, the witness, had no apprehension of a rescue, and it was before the disguised negro leader came up, and before there was any indication of a movement. Mr. Warren, the Deputy Marshal, testifies that he went out of the Court Room to go down to the Marshal's office five minutes before the rescue, and then observed nothing that excited his apprehension of a rescue—and this conforms to the time, or about the time, the witness testifies he saw the defendant. If the defendant was in the passage-way, at or about that time, and was not mistaken for Mr. Warren, of which the witness is confident, yet the point of time was such, as in the absence of all proof of some concert with the rescuers, not to bring home to the defendant a knowledge from what was then existing outside of the door, of an intended rescue. The credibility of Mr. Prescott is not affected. In my judgment, by the testimony of Mr. Hansoom, but, the facts testified to do not necessarily implicate the defendant.

The only other evidence refers to the manner the defendant went out of the door. Hutchins, who passed him out, says that the defendant turned his back to the wall, at the outer corner of the casement, instead of going directly forward, and put his head on the outer door, and then it started and was forced open. This act, as it was exhibited to the Commissioner, by the witness, is not inconsistent with the explanation that it was the result of the rush and pressure without, and the force there applied to the door; and if the attack was unexpected by the defendant, his neglect to interpose resistance to the forcing of the door, or to aid the officers, which it was his duty to have done, and which, it has been urged by the District Attorney for the prosecution, with much force in the argument, may have been caused from sudden surprise or agitation. And even if, as the previous and subsequent conduct of the defendant might lead to infer, it was a wilful omission of duty, especially in a magistrate, yet, if unaccompanied by any act or expression, aiding in, or inciting to the rescue, and in the absence of a call from a proper officer for assistance, it is not the distinct offence charged in the complaint, or defined in the statute; and the party, if answerable, is so in another form and tribunal. It is further to be considered, as suggested by the counsel for the defence, that the decision in this hearing is not final, or in any legal form conclusive, and as the defendant has a permanent locality, leaves the inquiry open elsewhere, should this evidence or further proof require it. Upon the whole evidence, therefore, and applying the rule which should govern preliminary examinations, of not binding over a party accused, without testimony beyond that which might constitute legal probable cause for his arrest and examination, I shall order that the defendant be discharged.

8,

Feb, 28th

The Fugitive Slave Case

EXAMINATION OF THOMAS PAUL SMITH—BEFORE U. S. COMMISSIONER B. F. HALLETT.

The examination of Thomas Paul Smith, (colored) clothes dealer, upon a complaint charging him with aiding in the escape and rescue of the fugitive slave Shadrach on Saturday, 15th inst., was commenced in the United States Court room, this morning, before Mr. Commissioner HALLETT. District Attorney LUNT appeared for the the Government, and C. G. DAVIS and C. LIST, Esquires, for the defendant.

Jeremiah S Prescott was the first witness called. I recognize the defendant, Smith, and remember to have seen him in the passage-way leading to this room from five to ten minutes before the rescue. Have known him by sight some time. Heard him make a reply to a negro man whom I supposed to be a minister, as he had a white handkerchief on. The man whom I took for a minister said, "It wont do—it wont do." This man, (Smith) turned round and said, "It will do—it will have to do—the more excitement the better." He then stood there and talked pretty loud. He was one who appeared to be the most excited. As a stout negro came up the passage-way, some colored person spoke to the defendant, and pointing to the stout negro, said, "that's the boy for us, I wish he'd been here before," or something to that purport.

The stout negro rushed along directly towards the door to this room, followed closely by Smith. As he was going towards the door, heard some one speak rather low, to which was replied "I'll bet high on him, or them." I know the one by sight who used this expression. While I was standing on the stairs, I saw a negro open his coat, and as I thought exhibit a weapon, but I did not see it. Should not think they had been at the door more than three minutes before I saw the outside door begin to open. I watched the stout negro particularly, because he was dressed peculiarly. When the door started to open, I saw the stout negro hold of the door, and the defendant was close along-side of him. Immediately after the door started, it stopped moving for a moment. They afterwards got the inner door open about a foot, and then there was another check, when all at once there was a rush and in they went.

At this moment I saw Smith at the side of the stout negro, and close by the tall negro, (Scott) who was examined the other day; these three, the stout negro, Scott, and Smith, appeared to be the leaders; they were all at the door, trying to get in; this man (Smith) I think made a yell; all kinds of noises were made; the next I saw of him (Smith) was when they were going down stairs with the fugitive; he was behind the fugitive, and I think, but will not be positive, that he was the man who had the sword; I was then standing on the stairs leading to the Municipal Court; I saw Smith coming out across the threshhold of the door and on the stairs going down; I saw him the next day after, and several times since; have seen him since in this room, in Court Square and in Brattle street; saw him the day that Burton was arrested; would not swear positively that I saw him on Sunday, the day next after the rescue, but think I saw him in Cambridge street on that day.

Cross Examined—If I saw him in Cambridge street on Sunday the 16th, it was not far from one o'clock—just about that hour. The first time I remember to have seen Smith, was sometime last summer. Don't think I ever spoke to him. Am 25 years of age to day. Most of the time since '37 have lived in Charlestown.

Edward J Jones. called. Am acquainted with Smith and have known him four or five years Think I saw him in this room on Saturday just previous to the Commissioner leaving his seat, and think he did not change his position until the crowd passed out; he passed out with the crowd; think I spoke to him After the body of the rescuing party had gone down stairs, I passed out of the east door, and when at the corner of the Court House, I think I saw Smith and another colored man coming up Franklin Avenue into Court street running. The fugitive and the crowd were at this moment passing towards Cambridge street. My attention was then attracted to a man coming off the steps of the Court House with a sword in his hand. I am quite sure the person whom I saw coming up the Avenue was Smith. My impression is that at one time I saw him coming into the Court House by the door near the entrance to the Police Court.

Cross Examined—Am quite familiar with him; his place of business is near my office, and I have done business for him; am not so confident that I saw Smith in the passage-way, as I am that I saw him first in the room; he went out with the crowd peaceably; he is a very peaceable man.

To the COMMISSIONER—Did not recognize the man whom I saw with Smith coming up the Avenue; he was a stout man

Ellis Wright called—I saw Smith on Cambridge street on the 16th inst., past two o'clock P. M.; he was with a large crowd of colored persons; they turned into Garden street; I was standing near a stable; the crowd had the same man whom I had seen in the dock in this room on that day; at the stable the crowd rushed him into a cab, and they got him out about as quick as he went in; some of the glass in the cab was broken; the crowd then rushed up Garden street with the man

Can't say I saw Smith with the crowd at all after they passed up Garden street; when I saw him in the crowd he was very near and behind the fugitive; have known Smith by sight for a year or two; I live in Garden street, and have seen Smith in that part of the city.

To THE COMMISSIONER—Last saw the crowd standing on the corner of Southac and Centre streets; there was not so much of a gathering there as there was when they passed in Cambridge street; saw some white men standing with the crowd; could not at that time tell whether the person whom I saw rushed into the cab was in the crowd or not.

Benjamin T Cheeney called—Saw the movement about the Court House on the 15th inst.; at five minutes before 2 o'clock, left my office, opposite, and was going to dinner; my attention was first called by seeing a person coming out of the second door from Court street on Court Square, on the westerly side of the building; I was then just leaving the door to my office in Railroad Exchange; saw this man have a short stick in his hand, with which he beckoned towards Court street; I then remarked to a friend who was with me, that that must mean something, and we stopped directly opposite the door where the man was standing.

Immediately upon this beckoning, a crowd of negroes rushed from towards Court street to the door where the man was standing. Nearly at the same moment, I saw the windows in the second story of the Court House raised. A moment after, I saw a colored person, with two other colored persons, one on each side, rush down the steps, and the crowd followed They ran very fast towards Court street, and the multitude after them I took particular notice, and remarked to my friend, that no white person was in the crowd. I stopped a moment or two until the crowd left the Square, when I passed on home. Did not recognise any one among the crowd.

No cross-examination of this witness. The Government here rested their case.

Mr. LIST inquired of the Commissioner whether, as the case now stands, a *prima facie* case had been made out against the defendant?

The COMMISSIONER said that the Counsel in the preliminary examination must judge for themselves.

Mr. LIST said he did not wish to take up the time of the Court, and inquired if, in case the defence established a clear and positive *alibi*, whether the Court would discharge the defendant?

The COMMISSIONER replied that that was a question he was not called upon to answer; it was like asking a jury to give their opinon before having time to deliberate. The counsel must manage their defence in their own way.

TESTIMONY FOR THE DEFENCE.

Henry Manuel called—Know defendant; he resides at No. 9 Second street; saw him on the 15th inst., about 11 o'clock A. M., at his house; I board with him; I left the house about that time, and left him writing; next saw him in his shop, about half past 2 P. M., at his writing desk; I heard of the rescue as I was in Court Square, between two and half past two.

To Mr. LUNT—I think, but don't know, about the time.

Thomas Paul called—Am teacher of the Smith School. Was in the school on the forenoon of the 15th inst. Have known Smith ever since he was born. He was in my School-room at half-past 11 A. M. on the 15th inst. He calls in frequently to see me. He remained on the 15th until I closed the School at 12 M. It rained so hard at the time, that I proposed to remain until it ceased raining Should think it was very near 1 P. M. when we left, and I went with him to the head of Brattle street where I left him, and saw him go down Brattle street. I went to Brattle street with Smith because he had no umbrella. I immediately went to my home in Piedmont street, to dinner, and the clock struck two about the time I finished eating. Did not hear of the arrest of a fugitive till 5 o'clock that afternoon. I remained at home that afternoon.

To Mr. LUNT—My usual dinner hour is one o'clock P. M. Do not remember hearing the clock strike one on that day, nor of hearing the bells ring. Don't remember of any complaint being made, because I was late to dinner on that day.

A recess of half an hour was now had.

After the recess, yesterday afternoon, the following witnesses were examined:

John B Smith, brother of the defendant, testified that he saw defendant on the 15th inst., about one o'clock P. M., at his shop in Brattle street. He remained from five to ten minutes, and then went out. He was gone about half an hour. Saw him when he returned—about twenty minutes before two. Robert Shepard and myself were in the shop when he came back. Defendant remained in the shop after he returned between twenty and thirty minutes. Mr. Pitts came in during this time. It was very near two o'clock when I heard of the rescue Was in the shop at the time I heard of it. Mr. Pitts, Mr. Ryan, Mr. Shepard, the defendant, myself, and a man who was at work in the back shop, were also there. Upon hearing of the rescue, the defendant and Mr. Pitts went out. He again returned to the shop in about ten or fifteen minutes after going out with Mr. Pitts. Couldn't say how long he remained.

To the COMMISSIONER—Was with my brother at the time of his arrest on this matter; that was the first I knew of a complaint being made against him. I first thought about the times I have named at the time of his arrest.—Don't make any account of the times he goes out and remains. Can't say that there is anything in particular that makes me remember the time.

Complaint, and pleading not guilty

Cross-examined. Am 15 years of age; do not go to school now; can read and write; didn't try to recollect these times until my brother was arrested; nobody has had any conversation with me about these facts to which I have testified, excepting a boy named James Clarry; never mentioned it to any other person whatever; was not in the Court House at all on the 15th inst; was not with the crowd on that day; didn't go out of the shop after I heard of the rescue until about 3 o'clock that afternoon.

To Mr. DAVIS—As soon as my brother was arrested, I stopped and thought.

Coffin Pitts called—Knows the defendant; keep store in the same shop with him at 28 Brattle street; on the 15th, about 2 o'clock, P. M., was wondering in my mind what would become of this poor man Shadrach, as I was sitting in the shop with the defendant. Mr. Smith stepped to the door upon hearing a man cry out that they had rescued him. Mr. Smith and myself came directly up Franklin Avenue towards the Court House; didn't see anything in particular done; saw a number of persons standing about (mostly white people) but don't know what they were talking about; staid around the square ten or fifteen minutes. Mr. Smith remained with me all the while and returned with me to the store; we were not gone more than half an hour; he remained there after returning from the Court House, about two hours or so; I saw him frequently at the shop during the afternoon; don't remember seeing Mr. Prescott about the Court House on that day, but think I have seen him before.

Cross examined—Was in this room on the 15th—probably about half an hour after the alleged slave was arrested, and remained until I heard the Commissioner say, "The Court is adjourned until Tuesday." I was so much interested about other things, that I can't say exactly about the time, but think it was between ten and eleven o'clock, that the Court was adjourned. I omitted going to dinner on that day Between the time of Shadrach's arrest and the time that Smith was arrested, I made no reply to any person whatever in relation to the points of time I have now testified to. No persons ever asked me any questions about it.

To the COMMISSIONER—The times I have spoken about as occurring on the 15th, are more strongly impressed on my mind, and probably always will be, than any thing else, because there was so much excitement; should think it was about 11 o'clock on the day that Smith was arrested that I heard of it.

To Mr. DAVIS—Did not at first hear what he was arrested for; a Mr. Hammond came up the Avenue with us.

To Mr. LUNT—I came up the Avenue rather in a hurry, because I felt interested; if my memory serves me we walked around the Court House.

Mr. Lunt—What was your object in walking around?

Answer—I didn't know that there was anything to forbid me going round.

Mr. Lunt—Oh! certainly, it's very proper for you to walk there.

Am not positive whether Mr. Smith went back with me, or whether he was in the shop when I got back, but I rather think he was there when I reached the shop.

To the COMMISSIONER—At the time I came up the avenue, the prisoner and crowd had all gone entirely.—Probably there might have been fifty people about the Court House. They did not attract my attention particularly.

To Mr. LUNT—There was no shouting at this time. I have contributed no funds to help this man (Shadrach) off, for the very good reason that I had none to contribute, as I am very poor, at present. I hav'nt been asked for any aid.

To Mr. DAVIS—I did not return to the shop with Mr. Smith, exactly. We were not more than five or ten minutes apart.

At this stage, the Court adjourned until 10 o'clock this morning.

The Commissioner came in this morning at ten o'clock, when the examination in the case of Thomas Paul Smith was resumed:

Simeon Wright (watchman) testified that about five minutes after the fugitive and the crowd passed up Court street and out of his sight, he saw defendant come out of Franklin avenue and pass across Court street into Court square; he spoke with the defendant and introduced him to Simon P. Hanscom; saw Hanscom and Jeremiah S. Prescott in conversation. The man on the right of the fugitive, when the crowd rushed out of the Court House, was a tall stout negro, who keeps a shop in Blackstone street; they call him Scott; if defendant had been in the crowd I think I should have seen him.

Simon P. Hanscom testified to being introduced to the defendant by Mr. Wright, and related the same circumstances in substance as on a former examination.

Edward J Jones was called by the defence and stated that he knew of no reason why he should change his testimony of yesterday. He does not wish to be understood as swearing *positively* to anything, but gives his impressions as they are strongly fixed upon his mind.

Jonas W. Clark and *John Ryan* testified to defendant being at his shop about two o'clock, and at the time when some person passed and said the man had been rescued.

Richard Hammond (colored) testified that he came up Franklin Avenue with defendant and Pitts, after the slave and crowd of colored persons were out of sight.—There were several white faces about the Court House at the time, but didn't see any colored faces except those of Pitts and Smith, who came up with him. The fugitive lost his slippers in the street, and said the witness, "I went up and kicked 'em over—it's a wonder to me that he did not lose his feet, that's all." I got back to the shop at half past two o'clock, and ate my dinner in the shop. Was not at the table more than three minutes.—Had for dinner bread, pudding, some wings of turkey—we got the bones, but not the meat.

The defence rested their case at this point.

Ellis Wright recalled by the Commissioner—and re affirmed his testimony relative to seeing the defendant with the crowd in Cambridge street. Have no doubt whatever that I saw him in the crowd, as I have stated. Would not say how he was dressed.

At five minutes past one o'clock, Mr. LUNT commenced his closing argument for the defence, and had not closed when we left the Court room, at two o'clock.

THE LATE OUTRAGE. District Attorney Lunt made his closing argument this forenoon in the case of Thomas Paul Smith, charged with aiding in the rescue and escape of the fugitive Shadrach, on the 15th ult. The Commissioner said, at the conclusion of Mr. Lunt's remarks, that he would delay giving his decision in the case until afternoon.

After the recess in another case, the Commissioner came in at five minutes before two o'clock, and delivered his opinion in the case of the United States vs. Smith, and decided to order the defendant to recognize in the sum of $2000 for his appearance on the 3d Tuesday of the present month, before the District Court of the United States, for trial.

The examination of Lewis Hayden, (colored) charged with aiding in the escape of the fugitive Shadrach on the 15th ult, was commenced before U. S. Commissioner Hallett, this morning, immediately after Mr. Lunt had concluded his argument in the case of Smith. The first witness for the prosecution, testified most positively that he saw Hayden get into the cab at Daley's stable in Garden street with Shadrach—then get out and go with him up Garden street, turn into Southac street, and when the crowd halted at the corner of Southac and Grove streets, Hayden said "now gentlemen, if you want this man to get clear stand back." The examination will probably not be concluded to-day.

THE LATE OUTRAGE. The examination of Lewis Hayden (colored) charged with aiding in the escape and rescue of the fugitive Shadrach, on the 15th ult., was concluded at half-past eleven o'clock this forenoon. Mr. George Greenleaf, reporter for the Times newspaper, testified that he was in the United States Marshal's office immediately after Hayden had been arrested and taken into the office. While there, in company with several others, he heard James N. Buffum, of Lynn, say to the defendant, "Lewis, you're a pretty clever fellow—I didn't think of your being here;" to which Hayden replied, "You know it takes a clever man to do such an act."

A witness testified that the man with whom Hayden got into the cab in Garden street, was the same man he saw in the dock in the Court room, on the 15th ult., and who was charged with being a fugitive from service and labor.

Another witness testified that on the afternoon of the 15th ult., he took Hayden and another negro into his cab, and carried them over Cambridge bridge into Cambridgeport, where they got out on some street, the name of which was unknown to witness, and walked off. He charged them $1 50 for carrying them over, but Hayden paid him $3.

J. A. ANDREW, counsel for the defendant, moved for the discharge of his client, on the ground of want of proof to sustain the complaint.

Mr. Commissioner HALLETT intimated that he should send the case up, when the defendant's counsel moved that the bail be reduced to $500, on account of the poverty of the defendant, and the peculiar circumstances in which he had been placed during the most of his life—that of being a slave, who, by his hard earnings, had purchased his freedom.

Mr. LUNT said he was not sure that if Hayden had been left alone by gentlemen who make themselves so conspicuous in this matter, he would not have conducted himself in such a manner as to entitle him to the respect of the community; but there were previous acts of his, which showed conclusively that he had taken part in deliberations for resistance to the enforcement of the law, of which the Commissioner was doubtless aware as well as he was himself. Within three or four months past, Hayden had presided at a public meeting where a resolution, deliberately drawn up, was passed recommending forcible resistance to the laws of the Union.

The Commissioner then ordered the prisoner to recognize, with sufficient surety, in the sum of $2000, for his appearance before the District Court of the United States, on the third Tuesday of the present month, for trial.

Then comes an alarm. Then the Executive ... out a proclamation ... sioner.

THE LATE OUTRAGE. The examination of John R. Coburn (colored,) charged with aiding in the escape and rescue of the fugitive Shadrach on the 15th ult., was commenced this morning before U. S. Commissioner HALLETT. Mr. District Attorney LUNT, conducts the prosecution, and JOHN A. BOLLES Esq., appears for defence.

Some five or six witnesses fully identify Coburn as being in the entry near the Court room door some time, and immediately preceding the rescue.

George W. Fairfield, 16 years of age, employed in the District Clerk's office, testifies that on the 15th ult. while the fugitive was in the Court room, he saw Coburn three different times in the entry, walking back and forth, apparently excited; that he heard him say he wished he had a handful of cayonne peppermints—he'd throw 'em at that d—d Irishman's eyes. Another negro asked "what Irishman?" Coburn replied, "that Byrnes—that officer who arrested Shadrach"; also heard Coburn say he wished he could get hold of that door, he'd keep hold of it till he pulled his arms off.

This was about half past 12 o'clock. At 10 minutes before 2 o'clock, P. M., witness again saw Coburn standing in the entry opposite the court-room door, in the crowd; and again, just at 2 o'clock, while he (witness) was in the office, he heard outcries, and saw a man, dressed as Coburn was ten minutes before, crowding in upon the inner door, but did not see his face at that time.

George Hadley testified that between half-past 12 and 1 o'clock on the afternoon of the 15th ult., he saw Coburn in the passage-way, between the two doors to the Court room, and heard him say, "If a crowd could rush in, they could easily get him out."

At 12 o'clock M., the Government testimony was all in.

[illegible] SHADRACH [illegible] COBURN BY LUNT. About 4 o'clock

Examination of
James Scott.

EXAMINATION OF JAMES SCOTT.

The examination of James Scott, (colored) upon the charge of aiding in the escape of the fugitive Shadrach on the 15th inst., was commenced at 11 o'clock this morning, immediately after the delivery of the opinion of the Commissioner, in the case of Mr. Davis.

Hon. Geo Lunt for the prosecution, John G. King and Robert Morris, Jr., Esqs., for defence.

Much of the testimony in this case, was the same as in the two similar cases which have already been disposed of, and we shall only report such as refers more particularly to the defendant in the present case.

Patrick Riley, Deputy U. S. Marshal, testified that he knew none of the negroes in the mob, and does not remember of ever having seen any of them before.

Edward J. Jones, constable, called—In consequence of what the Messenger of the Court stated to me, as to what was going on in the Court room, I came into the room. After the Marshal had given orders to clear the room, I saw a tall negro who spoke to the prisoner, and told him not to be afraid; they would stand by him to the death. I exclaimed. "Silence!" He appeared to be reluctant to leave, and I hurried him along. Soon after, as I was about leaving, Mr. Riley ordered me to stay; but subsequently I obtained leave of absence, and went home. Reached home about a quarter past one o'clock, and returned to the Court House about twenty minutes before two o'clock. Passed up stairs into the Municipal Court room, and looked at the Revised Statutes.

While looking at the Statutes, I heard a shout, and I immediately hurried down. Just as I got where I could see the door to this room, the crowd were pulling open the panel door, with Mr. Hutchins holding on to it. I sprang into the crowd and did what I could. At this time I saw the defendant, Scott, in the crowd. There might have been half a dozen before him, and perhaps as many more behind him. The stairs and passage-way were entirely blockaded with colored persons. Some thirty or forty perhaps rushed in, and Mr. Hutchins and myself tried to close the door and fasten them in, but in this we did not succeed. I saw Scott near the centre of the crowd, swaying sideways, and struggling to get forward. I have known him four or five years. At the time we tried to close the door, I lost sight of Scott, and did not see him afterwards. Could not say whether he went into the room or not.

To Mr. King—When I reached the foot of the stairs, I saw Mr. Homer looking over the banisters; we were prevented from closing the door upon those who came in, by the crowd who remained in the passage way using force; there was a number who *rushed* in, and there were others who were more leisurely about it; am confident as to the identity of Scott; I saw him but once; caught sight of him only once at the door: couldn't say how he was dressed, or what he had on his head; at the time I saw him, he was in the midst of the crowd; when I saw Scott I was attempting to persuade the crowd to keep back; it is possible it might not have been Scott whom I saw, but I have no doubt of it myself; Scott and myself have been on intimate terms for some time; don't think anything would excite him except a matter of this kind. He is remarkably docile in his general deportment; when I was speaking to the tall negro in the rear of the prisoner, I think I saw Scott passing out of the room, but I will not be sure of it.

Frederick D. Byrnes called—Saw Scott here on Saturday, the 15th inst.; the first that I saw of him was in the court room, before the adjournment; the next time I remember of seeing him was at the time we were holding the green baize door; at that moment he was in the crowd. Mr. Wright passed in, and Scott was the next to him; he was right in the corner, next to the frame of the door; myself, Mr. Sawin and Mr. Clark held him (Scott) in that position some little time; did not have hold of his person, but held on to the door to keep the crowd back; as the door was burst open, Scott came into the room; have no acquaintance with him, but have frequently seen him in the streets; there was quite a scuffle here in the room; he (Scott) went out of the room with the crowd.

Nothing material was elicited upon the cross-examination of this witness.

Charles Sawin called—I remember of seeing Scott here on the 15th inst. First saw him in the crowd before the Court adjourned. He seemed very desirous of speaking to the prisoner, but was not allowed to. Next saw him in the entry-way, directly after the shout "take him out boys" was given. He was in the crowd outside the door, and between him and me was Mr. Wright. Did not see him inside the room after the rush was made, but should think from the position he stood in, the crowd would naturally bring him in.

To Mr. King—When I first saw Scott, I was sitting beside the prisoner, and he (Scott) was back of the prisoner. The second time I saw him, was at the door, where I was doing all in my power to prevent the crowd from coming in. Have frequently seen the defendant, but have no acquaintance with him.

Mr. Lunt here stated that he had but one other witness, but as he was not present, he would call him when he came in, if the counsel for the defence had no objections. If agreeable, the defence could proceed to introduce its testimony.

Mr. King stated that he had no witnesses whom he wished to offer, but with great confidence, he should move for the discharge of the defendant from the complaint against him, on the ground that the three or four witnesses who testify to having seen him, were in no position to identify him, and the defendant himself was in a position where it would be impossible for him to be prevented from entering the room at the time of the rush. The witnesses do not place the defendant in any position as taking part in the affray.

The testimony is that he was seen in three different places at nearly the same time, and Mr. King argued that he could not be the same person seen by each of the witnesses. The difficulty of fixing the identity of colored people was so great, that the witnesses were mistaken as to the identity of the defendant.

The Commissioner thought the evidence placed him in such a position as showed him to be among the most active in forcing the door. The argument urged by the counsel as to establishing the identity of colored men could be used in any case, but it was clearly manifest that it was his duty in the present case, to hold the defendant for trial.

James Scott was thereupon ordered to recognize with surety in $2,000, for his appearance for trial on the 3d Tuesday of March next, before the District Court of the United States.

Patrick Riley, Am Deputy U. S. Marshall. Had an alleged fugitive Slave in Custody called Shadrach. I arrested him on a warrant. The man I arrested was taken by a mob from this room. It was the man mentioned in my return. He was taken from the room at about two o'clock on Saturday the 15th the same day of the arrest.

x Think it was about two o'clk from the fact that the counsel thinking it at dinner time I ordered them to retire. It did not vary five minutes either way from two o'clk. It did not occupy the mob more than a minute in taking Shadrach out of the room. He was immediately taken from the Court house. The mob consisted of blacks, am not able to recognise one of them. they were all strangers to me.

Edward J. Jones. I am a Constable. was in this Court room Saturday the 15th inst. Came in just before Mr. Curtis adjourned the

Complaint, and summons issued [illegible] Law.
[illegible] accordingly

Court. I was sent for by the Deputy Marshall. Think Mr Moses came to my office in Franklin Avenue for me While I was here a tall black man behind the bar wanted to speak to Shadrach the prisoner. He told the prisoner not to be afraid that they would stand by him to the death. I told him to be silent and keep quiet. The man then mingled with the crowd and went away. Mr Riley presently ordered me to stay here. I went up into the municipal Court room, and while examining the Rev. Statutes, I heard a shout. Came down the stairs and saw a Crowd of persons upon the stairs. Mr Betton myself and Mr Homer were examining the statutes - I came down stairs in a hurry, came down four or five steps at a time, as quick as I could. I got down ½ minute sooner than Mr Homer did. Just I reached the landing the door flung back. Mr Hutchings was holding on to it. I went into the Crowd. They were pushing towards

the door. Saw Mr Neale's face
He was looking down the edge of
the green baize door calling out to the
Crowd. I took hold of two or three persons
in the crowd. I saw Mr Scott in the Crowd
He could not keep his footing but was
pushed back & forth by the Crowd.
There might have been eight or ten persons
before him and as many more behind
him. The Crowd were coming from the
direction of the Supreme Court room, and
also up the stairs. There was from 40
to fifty colored persons about the door. He
attempted to shut the door and fasten
them inside. When I saw Mr Scott he
was near the Centre of the Crowd. He was
rolling to & fro - as I thought, struggling
to get forward. Have known Scott
some time. Don't recollect seeing him
afterwards. Have known him four or
five years. Saw the rush when the
prisoner was brought out & saw him
go down stairs. There could not have
been less than 20 or 30 persons that
came into this Court room.

X when I came down stairs
I tried to prevent the Crowd from
going in at the door; and also attempt-
ed to prevent them from opening the

Complaint, and prevent[illegible]
the same accor[illegible]
Clair.

door. I was on the outer edge of the outside door. When the door was pressed open we tried to shut it & keep the mob in. From 20 to 30 persons came into the room. and abt. as many more remained in the entry. I do not feel confident that Mr. Scott was in the entry. I only caught sight of him once. Cannot tell how he was dressed. Cannot say what he had on his head. Saw his head & shoulders. He was in the midst of the crowd. My impression is that he did not have his hat on. When I came down the door was opening & Mr. Hutchings had hold of it. The persons coming up stairs and through the entry met and created a jam. I went next to the wall and got through the crowd without much difficulty. When I saw Scott I was in the crowd and tried to persuade them to go back. Mr. Scott was in front of me and near the door. Take people of the same color and it is very difficult to identify them. I have no doubt it was Mr. Scott but I may have been mistaken. Mr. Scott and I have

been on intimate terms for some time. He is very docile and quiet. I dont think any thing would excite him except a question of this kind. I think Mr Scott was not in the Court room when the man spoke to the prisoner.

Frederick D. Byrnes. I saw Mr Scott here that day. The first time I saw him he was in the west part of the Court room: it was before the adjournment. Saw him again in the corner of the door after the room had been cleared. At that time we were pressing against the green baize door. I saw him in with the crowd. Mr Wright passed in & he (Mr Scott) was the next person that came in. We joined him up in the corner against the frame of the baize door, and held him there some time. Mr Sawin & Mr Clark were at the door with me. I have frequently seen Scott but never spoke to him. Think I was here when the complaint was read. After the door was burst open Scott came into the room & stood in front of the Clerks desk. I have not the least doubt of the identity of Scott. Dont know who had the

complaint, and [illegible]
[illegible]

of Shadrach. He went out with the crowd.

+ Scott was the corner where the door shuts in. He was on the inside of the green baize door between the edge of the door and the door frame. Mr Wright stood next to him - at that time no one else had got into the Court room. The crowd then pushed the door open and came in.

Simpson Clark. I cannot swear positively that I can recognise Mr Scott as one of the men who came into the room.

Charles Sawin. I recognise Scott - I first saw him in the crowd before the Court adjourned. He seemed very desirous to speak to the prisoner but was not allowed to. Mr Jones and others helped clear the room - Mr Scott went out very reluctantly. I next saw him in the entryway directly after the Chief was ordered to "take him out boys". I then saw Scott in the crowd outside the door and between Scott and me stood Mr Wright. He was there

rest. Mr Wright sung out "In, in", & the Colored people said so to. I should think that from the position in which Mr Scott stood the Crowd would naturally force him into the Room.

X. The first time I saw him he was back, behind the prisoner, and near the door. I next saw him when he was going out. When I saw him at the door I was pressing against it to prevent the people from coming in. I stood near the west railing the most of the time while the crowd were in here. I had my back against the door pressing with all my might. Was where I could see out into the entry. Cannot say who was on the extreme edge of the door. I have no acquaintance with the prisoner. don't remember ever seeing him prior to that day.

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No testimony offered on the part of the defendant. Mr King moved for his discharge &c.

The Commissioner bound Scott over for his appearance &c. in $2000. (over)

Complaint, and Summons issued &c.
Plaintiff's Counsel sworn &c.

Mr Edward J. Jones, Constable says that from the position in which he stood he must have seen Scott had he (Scott) gone into the Court room at the time of the rescue. And that after the persons went into the room Mr Hutchings said to him (Jones) let us now see if we cannot identify some of these fellows - that he particularly looked at the mob of persons as they came out, and he did not see Mr Scott among them. He thinks Mr Scott went down stairs while the mob was in the Court room.

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Mr Hutchings says he did not see Mr Scott in the crowd at the door.]

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United States of America

Massachusetts = District ss.

To S. J. Hallett Esquire Commissioner of the Circuit Court of the United States, for the District of Massachusetts.

George Lunt, Esquire, Attorney of the U.S. for Massachusetts District in behalf of said United States, on oath Complains, and informs Your Honor, that on the fifteenth day of February in the year of our Lord One thousand Eight hundred & Fifty one at Boston in said District one Robert Morris of said Boston, Esq. with force and arms did aid and abet, assist one Shadrach otherwise called Frederick otherwise called Frederick Wilkins otherwise called Frederick Minkins the same being then & there a person owing service or labor and a fugitive from service or labor to escape from Charles Devens, junior, marshall of the United States for the District of Massachusetts, who was then and there a person legally authorised to arrest said fugitive and said fugitive having been then & there arrested in pursuance of the authority given & declared in a certain statute of the United States approved on the Eighteenth day of September in the year of our Lord One thousand Eight hundred & fifty, against the peace and dignity of the United States & contrary to the form of the statute in such case made and provided.

Wherefore the said Complainant Complains that the said may be apprehended, and held to answer this Complaint, and further dealt with, relative thereto, according to law.

And furthermore the said Complainant prays that

Benjamin H. Bailey -
John Fedriken -
George F. Smith -
Thomas Garretty -
Bullard -

may be duly summoned to appear and give evidence touching the subject matter of this Complaint

(signed) George Lunt
U. States Att'y

United States of America
Massachusetts District, ss. } Boston, March

Then the above named George personally appeared and made oath to the truth of the above complaint by him subscribed.

Before

signed B. F. Hallett } Commissioner of the U.S. Circuit Court for Massachusetts Dist

From the Boston Daily Times
March 11, 1850.

ALLEGED ATTEMPT TO INTIMIDATE A WITNESS. During the testimony of Mr. Jeremiah H Prescott, yesterday, before United States Commissioner Hallett, in the case of Joseph K. Hayes, charged with aiding and abetting in the rescue and escape of Shadrach, the witness remarked that, in the court-room that morning, Robert Morris, the colored lawyer, just bound over under like charge, had attempted to intimidate him by threats, and that other counsel seemingly countenanced, at least, the onslaught, and joined in browbeating and ridiculing language towards him. The Commissioner was about taking cognizance of this as a contempt of court, and as having a connection with the present case. But, on Mr. Prescott's remarking that it was partially before the court came to order, the Commissioner passed it by after remarking that all attempts to intimidate a witness were a great outrage under the laws—that he hoped all witnesses on whom intimidation might be attempted would inform him of the facts, and he should thereupon recommend the United States District Attorney to issue proper process in relation to the matter.

Boston Morning Post
March 11th, 1850.

Copy.

United States on Complaint of George Lunt District attorney
— vs —
R. F. Morris
Examination before B. F. Hallet Esq U.S. Commissioner.

Benjamin H. Bailey. Saw Mr. Morris on Saturday Feb. 15th. Saw him in a cab on the corner of Garden & Cambridge Sts. There were I cannot say who was with him. two or three men in the cab with him. They were colored men. It was about two o'clock P.M. Two hundred people around the cab. Saw them (the crowd) Crossing from the South side of Bulfinch St. in Cambridge St. Did not see Mr. Morris in the Crowd. First saw him in the cab. Cab as he was getting out of the cab. I did not see him get into the cab. Should think he was within two feet of him. I did not see the other people get out of the cab. After they got out of the cab, they went up Garden St. into Southac St. I had not been in the Court House that day. I followed on behind the Crowd as far as the Church in Southac St. I did not remain there but a few moments. did not see Mr. Morris after he got

out of the Cab. I Have seen
Mr Morris a great many times
before — I did not see any
person dressed peculiarly
that attracted my attention
I cannot swear that I saw
any White people in the
Crowd — The Crowd stopped
around the Cab. — I did not
see any persons get into
the Cab. — did not see any
person get out of the Cab
but Mr Morris — The men
of them went up Garden St —

I am a
Carpenter. I work in my
horticultural place at present. and
shop. I live in Butler Cloth St.
Have no personal acquaintance
with Mr Morris formerly, but
seen him. Never spoke
to him. Have seen him
in various parts of the
City — Have seen him
in Cambridge St. — Have seen
him in a great many
both cannot tell any one particular place
Have seen him in different places
for the last 2 years cannot
when I have seen him exactly once in Cambridge

block

He had a hat on. Cannot tell what kind of a coat — as I had a distant view about the hat — The man I saw come out of the Cab which I took to be Mr. Morris had a black on — I swear to that — I don't remember any other hat of his does. I was in the middle of Hanover St at or near Hall's dock from the Cab. Cab was a little above the door. There were other persons between me and the Cab: there was quite a crowd. The crowd was standing round there when he did get out of the Cab. Cannot tell how many people between me & the Cab. I was outside of the crowd. The Cab was close to the edge of the most of the crowd were in the St. I was outside the crowd — I was six or eight feet back of the crowd. I am sure he was getting out of the Cab. and not it could not be any.

Times Court Record.

Examination of Robert Morris, colored lawyer, for Aiding and Abetting in the Rescue and Escape of Shadrach.

BEFORE U. S. COMMISSIONER HALLETT.

U. S. District Court Room,
Friday, March 7th.

The Commissioner's Court came in at 10 o'clock, and the examination of Robert Morris, colored member of the Bar, charged with assisting in he rescue and escape of the alleged fugitive "Shadrach," was commenced.

Geo Lunt, Esq, appeared for the United States, and John G King, Esq, for the Defendant.

Benjamin H Baily, sworn —I saw Robert Morris on the 15th of February in a cab in Garden street near the corner of Cambridge street; there were two or three other colored men in the cab whom I did not know; it was about 2 o'clock, P. M.; should think there were 200 in number in the crowd present; saw Mr Morris as he was getting out of the cab; the people in the cab after getting out ran up Garden street into Southac street.

John Fedethen—Have known Morris for three years; saw him on Saturday, 15th, in a cab in Garden street, near the corner of Cambridge street; he was sitting in the cab; I was on the opposite sidewalk from the cab; saw several get out of the cab; saw a person whom I supposed to be Shadrach; he was a colored person and had no coat or hat on; knew of the rescue at the time; Morris had then got out; did not see him get out; I saw him go up the street with the crowd, Shadrach being with the crowd at the same time.

I have not the slightest doubt that the person I saw get out of the cab was Mr Morris.

Cross-examined—I followed the crowd from Mr Fisher's store, No 71 Court street, which the passed on their way from the Court House to Garden st; should say there were two or three hundred people in the crowd; the cab was backed up to the sidewalk; I was on the opposite side of the street.

body else — [to Mr. Hallett] I think I was a little above the Cab. I stood in the gutter. I think I saw him two or three seconds — did not see him afterwards — [to Hallett] I don't know of but one Crowd. on that side. I saw a window broken in the door of the Cab. I saw the glass broke in the door of the Cab —

John Fedtchen — I know Mr. Morris. have known him for this 2 years. I was at 53 Court St. saw him in a Cab, near the corner of Garden St — saw him sitting on the seat in a Cab. I was on the side walk opposite the Cab. saw him through the front window — saw other persons but did not see Mr. Morris. Saw who I understood to be Shadrach. He had no hat or coat on — saw him after the Crowd [illegible]

4 (Garden St)

up the St. & They went into Southack St. Quiet as long as the Church Did not attend service all when they went to — the Crowd Stopped — The fugitive went off some where — Cannot tell where Had not been in the church house that day — I followed the Crowd down Court St. the Boys told me the fugitive had been Escaped Negro not the Slightest doubt, that the person I saw was Mr. Morris — They went pretty slow Some part of the way. Saw no obstacle to prevent their motion saw no person trying to prevent their going ahead — The Crowd was mostly made up of Colored people —

+ Cab did not move at all. Kept upon the side walk with the Crowd down Court St. was as near the Crowd as I wanted to be almost time & felt some times I

5 was never part way on
that way walked. First
saw Mr. M. sitting in the
cab. Started first in
Cambridge St. Think there
were two or three hundred
people in the crowd.
Backed up against the side
walk - I was on the Star-
Rite side of the St. I saw
Mr. Mc through the front
window - did not see
him get in or out of
the cab. - Saw him after-
wards running up Cam-
bridge - Obt. hold the length
of Court room from him -
Did not take notice if
his dress - He had a
hat on and sure of it.
Mean he had a hat on
when going up the Steps -
Had nothing on his head -
in the cab. Don't remember
any other part of his dress
all very sure about the
hat. Saw him in the Cab
about a minute - I then
I came up Hanson and
in the Cab -

Did not him longer than it would take to run up the St. He had a hat on He was going behind this fugitive - Nearer the middle than behind the crowd I was on the side walks behind the Crowd - It is not very narrow - They were not in a solid body Think there was more than twelve people between myself & Mr. Morris. Think there was not 20 persons - I followed as far as the Church Last saw Mr. Morris as the Crowd turned into Southack St. The fugitive was as far from the Church as this is to Pemberton Square. The most of the Crowd remained near the Church. Cannot say what became of the fugitive. Last saw the fugitive in Southack St. Crossing Centre St - Did not see where the fugitive went to. There were a good many persons following the Crowd from Cambridge St. in the Crowd but not

James Andrews, sworn.—I am employed in the office of the Clerk of the Circuit Court. On the 15th ult, I was in the passage way when the panel door was forced open; saw Morris there about quarter of an hour previous. He walked up the passage way towards the Supreme Court—some colored people followed him. He spoke to them, and then turned and came back. I saw him at two or three different times—saw him in attendance at the Commissioner's Court. I think I remained in the entry all the time after seeing Mr Morris up to the forcing open of the doors. I recollect that in the course of that time I spoke to Mr Prescott and to some of the colored men.

7. James B. Andrews. Am 15 years old — was here on the 15th. was in the entry at the time of the fuss was there when the outside door was knock open Scott Nesbitt asking Mr. Morris there ~~Saw~~ then — Saw him there 15 minutes before the door was opened Saw him walking with the entry Posse of the Colored men followed him, he spoke to them & came back again. Saw him two or three times. He was here when the Commissioner was here — Saw him twice before that time in the entry ~~before~~ he appeared to be talking with the Colored persons in the entry did not hear what he said in either of the conversations — did not see him go away. He came towards the Courthouse door 15 minutes before the disco

8. I think I remained in the South ~~Room~~ house entry all the time afterwards until the door was last open — did not all the time remain in the same place. I talked with some of the Colored men & Mr. Prescott — I saw Mr. Morris here when the Commissioner was here.

7. The last time I think I remained in the entry all the time. Went back into the office before the prisoner was brought out. Did not see Mr. Morris with Mr. R. H. Dana or with Mr. Ellis Gray Loring — Saw him in the entry at one time perhaps three or four minutes —

Jonas Stratton, sworn.—I saw Mr Morris on the day of the rescue on the third or fourth step leading from here to the Municipal Court; the time was not far from two o'clock. I had just come out of the Police Court, having heard a noise above. A colored man stood on the first landing of the stairway calling out for people to "come up" As I ascended the stairway there was a dense crowd about the door to this room. It was then that I looked upward and saw Mr Morris. He was smiling slightly, and shook his head at me. The panel door was then open, and the baize door partially open, and the crowd were pressing against it. Those in the rear of the crowd were crying out—"Push harder!" When the crowd rushed into the room I do not know what became of Mr Morris.

9.

Jonas Stratton saw Mr W. on the day of the rescue on the steps leading up into the Municipal Court - I came up the lower stairs leading from the Police Court I came up S. in consequence of hearing a noise - it was near two o'clock when I came up somebody was on the first landing singing and first some col.d man to come up - One the floor near this door the landing was full as it could be. people were calling out & pressing behind - I got here near or into the door before I left. At that time I saw Mr Morris - when I got up to the landing I saw Mr Morris on the S. side He was smiling a very little and shook his head at me The outer door was at that time thrown entirely back And the Police box door was ~~shut~~ so more than half

way open - people were pressing very hard against the green baize door. Mr. Morris was right in front of the door. I was back off my mark a little and ~~had~~ discovered that the prisoner had escaped from the (north) door. I turned then to go down stairs. Don't know what became of Mr. Morris - I went immediately into the police court room -

x. I came up just as the door was being forced open. with many persons on the stairs had no difficulty in coming up stairs. - [Some persons followed me up stairs -] the crowd piled up in the entry - Some had got into the room when I pushed the door. and the crowd were pressing through the inner door I was not there more than a minute before crowd passed out - They passed one in the entry as I was going down - I think Mr. Horsley and then passed

11.

Saw Mr Riley first as the Crowd got in. My impression at the moment was that the prisoner had escaped from the north door. Mr Homer when I first saw him he was coming from the towards the Supreme Court Room — did not see him come down the stairs. When I first saw Mr Homer the Crowd had nearly all passed down stairs. Mr Homer was 6 or 8 feet from the door on the floor — [When I first came up I saw Mr Morris on the stairs and the outer door was entirely open & the inner door part way open.] Mr Homer appeared to be coming from the Supreme Court Room — I was standing side ways in the door when I first saw Mr Homer — did not see Mr H. on the stairs case. Saw Mr M. when I first came up. did not see him afterwards did not know what he had on his head. Cant tell what he had on.

Isaac F. Hosea sworn—On the day of the rescue I saw Mr Morris on the landing near the door to this room. I had heard a noise, and came down from the Common Pleas Court. The panel door had then been forced open, and the inner partly open. I saw him shake his finger at Mr Stratton, and say something to him. I think he went down the stairs with the crowd when the rescue had taken place. When I saw him he was standing at the side of the door nearest the stairs.

12. Isaac F. R. Hosley – Have seen the Gentleman dont know his personally – Saw him on Saturday the 15th. I was on the stairs leading to the Municipal Court room – when I got down there the outer door was open & the crowd were shouting and hyssing, I got the green baize door open saw him by the door on the floor he came onto the stairs when they first shouted saw the mob coming and took out the Court house – dont know whether Mr. M. Kinnick or not but think he went down with the crowd. Did not hear him say any thing. I saw him shake his fingers at Mr. Stratton – and say Some thing to him. The crowd had not then got into the room –

X no business at present I have been to California returned last September – done nothing since that time – My father gives me my board – I have money of my own –

13. came from the Court of Common Pleas. had been sitting there as a Spectator. go there every day — came thro. the passway by the door of the municipal Court Room. The outside door was half way open & the Crowd were pressing against the inner door. There was 30 or 40 people in the entry at that time — I stood on the 3d Stair from the bottom — Stood there all the time — was within 6 or 7 feet of Mr M. He stood at the side of the door on the inside nearest the stair case. He stood there two or three minutes looking at the crowd. He was there when Mr. Stratton came up stairs. (I saw Mr. Stratton) Cannot say how long he (M) had been there before Stratton came up stairs — was standing by the side of Stratton when he shot his finger at him. He appeared to speak to S but did not hear what he said. It is my opinion Mr S & he exchanged looks — they were standing close together — Their shoulders touch

N4

each other Mr Stratton had just come up stairs — Had not seen Mr. before that time that day — Stratton went right down stairs. I saw M & S. together. saw them both at the same time. did not see Mr on the stairs case I was standing. I went down with the crowd after the fugitive went down into Court Square was on the stairs three or four minutes. Thinks it did not ~~take~~ more than a minute. (2 minutes, what saw at the outside) When I came down stairs the door was just open and saw Morin & Stratton standing on the floor together — Mr Stratton had a white hat on. Thinks Mr. had a hat on — Did not see S & M. in any other place than where I first saw them — Don't know what became of Mr. M. after I saw him near the door Don't know which way he went down stairs

Charles Satern sworn—On the day of the rescue I several times saw Mr Morris in the Court House. He and another tall man spoke to Shadrach while I was sitting beside him They whispered in his ear, and as soon as they left him he rose from his seat, took off his coat, rolled up his sleeves, adjusted his neckhercbief, and remarked—"*If I die, I die like a man!*" I have since learned that the tall man was Ellis Gray Loring.

15. Chas. Lawrie. Saw Morris here on Saturday the 15th. Several time — He spoke to the Prisoner several time. M. & another man I did not know spoke with the Prisoner — afterwards the Prisoner took off his coat rolled up his sleeves and tied his handkerchief in a square with the Prisoner then said if I die I will die like a man. Mr. M. was within the bar — the Prisoner was outside the bar — M. M. whispered to him. I did not hear what was said — Have since learned that the other person was Ellis Grey Loring. Mr. Morris was in and out two three times — It was agreed that Mr. Morris should be one of his Counsel. I am confident he was sent for by the Prisoner. Cannot say when he left the last time.

X. was sitting saw the Prisoner make his mark to a letter. Something said about the letter being a power of attorney —

Ge Greenleaf, sworn.—[Witness was here as Reporter of the Times newspaper when Shadrach was under arrest in the Commissioners' Court; saw a tall white man lean over the rail and speak to Shadrach; and directly after saw Shadrach rise from his seat and manœuvre and remark as testified by Mr Sawin. Saw Morris within the bar, and one or more times go and speak to Shadrach. Morris seemed to take much interest in the affair—enough to give an impression that he was acting as one of the counsel. The witness sat at a table very near to Shadrach.]

P. Riley, U. S. Deputy Marshal, testified that he admitted Mr Morris on that occasion on being given to understand that he was one of counsel.

16. Mr. M. was here in the all room think he was near the fugitive

Mr Greenleaf was in the Court Room — Some person outside the bar spoke to the prisoner & some one inside also spoke to him — Afterwards the prisoner took off his Coat &c. and said if I die — Think it was before the adjournment — Saw Mr Morris

left after all the Col. people went out — cannot tell whether for not — saw him last

X. I got here before he was arrested very few people here at that time think I stated these circumstances in the paper (Times)

S. Riley — Think Mr. M. was here when the prisoner was arraigned — He was here in out from the time of the assert until the departure of Mr Wright and Davis — Hermitte & The only reason I took Mr. M. see the prisoner was because I understood him to be a Counsel.

Simpson Clark, one of the Deputies who held Shadrach in custody, was sworn, and testified in regard to affairs before the Commissioners' Court.

17. Think Mr. M. left a few minutes before Mr. Davis went out.

x. I allowed him one of the counsel – I held no conversation to my knowledge with Mr. M.

Clark I think he was here when the papers were read. x I was here when Mr. Curtis read the papers to the Prisoner – I cannot say how many papers Mr. Curtis read. Mr Morris left in front of me I did hear Mr. Curtis read some papers, he had a number of papers – I know Mr. Curtis did read the papers – The most of the time he was here – think Mr. M. was here all the time Curtis was upon the bench. I cannot specify what papers Mr. Curtis read. Feel quite confident that Mr. M was here nearly all the time of the hearing before Mr. Curtis.

Ellis Wright, sworn—I saw Shadrach on the 15th ult., when he was brought into the Court House under arrest. He was the same individual whom I saw, in Garden street about 2 o'clock, get into the cab; and then get out and go up the street in the crowd.

Mr. Sawin. Mr. Morris was here when the papers were read. Think Mr. Curtis read the Complaint — Col. Thomas read quite a number of papers —

Mr. Ellis Wright — Saw the fugitive in the Court Room, afterwards saw him in Cambridge St. just before they turned into Garden St. He had no coat on hat on — I saw two go into the Cab. did not see but three in the Cab. Saw the glass when it was broken Shadrach was one of the men who got into the Cab — They went up Garden Street. The Crowd I was on the opposite side of the Street — from the Cab. and went up Garden St. There was a great crowd round the Cab. Distinctly saw the mans face. If he had been dressed differently think I should not have seen —

George Smith, sworn —On the 15th about two o'clock, I saw Mr Morris in a large crowd going through Southac street. With him was a man without a coat, and people said he was a "fegitive." Morris had on a black hat.

19. might have mistook another
Col. man of abt that complex-
ion without Coat & hat on.

Geo. Smith. Saw M.
going through Southern
St. with a large crowd.
Saw a man whom they s.
was the fugitive -

X. He was about half
way down Seventeen St.
going towards the Church.
The man without Coat
on was going down S. St.
& the Crowd came up
I stood on the corner of Garden
& S. St. Mr. M. had on a
black hat - did not notice
any other part of his dress.
Saw last Saw M. standing
in the Crowde in front of
the Church - Did not
at that time see the
fugitive - Some person
had hold of the fugitive
Mr M. was in the rear of
the fugitive (half the length of
this room) they passed

Thomas Garrety, sworn.—I saw Morris getting into a cab at the corner of Garden street, on the afternoon of the 15th ult. Two other colored men got in with him, and they all got out again and went up Garden street. I have no doubt it was Morris. When the three got into the cab, persons in the crowd cried—"Take him out!"

The Government rested here.

Mr King, for the defence, here moved for the discharge of the defendant: on the ground that no evidence had been adduced to justify his being held, and he presumed that the Commissioner himself did not think it necessary to go into any defence.

The Commissioner, in view of the testimony, was surprised at the presumption of the counsel of the defence on this point, and thought if any defence could be made, the interest of the defendant rather required its production.

Mr. King was equally surprised at this intimation on the part of the Commissioner, having viewed the evidence as not at all bearing against the prisoner.

Mr. King then, without offering any evidence for the defence, proceeded to a closing argument. He assumed that no overt act, word or deed, had been attached to Mr. Morris by any of the witnesses who had seen him in or about the Court House on the day of the rescue; and as to Morris having been seen in a cab with Shadrach, the gentleman maintained that the rescue and escape had been fully completed, and that the person so escaped was entitle[illegible] tendance of Morris, as counsel, to advise him after such escape. Mr King also assumed that an attempt to conceal the fugitive at West End, after he had escaped from the Court House, was quite a different thing from aiding and abetting in the escape. He still further supposed that Morris was at the cab making peace—getting persons out of it, and thereby endeavoring to prevent trespass upon the property of the cab owner.

District Attorney Lunt thought it quite unnecessary for him to argue the cause for the Government.

As it was evident that the Commissioner would hold the defendant for trial, it was suggested on the part of the defence that bail could be more easily obtained in the morning; and the Commissioner deferred a formal decision until Saturday morning at 10 o'clock, to which time the Court was adjourned.

Thomas Garretty swore in court, in Haden's case, that he could not recognize any other person in the cab but Hayden. [Afterwards he told Mr. at the court house door that he did not know one of the other persons was but that he would not tell who it was. Mr. Hayden]

by me down the St. ahead of me -

Thomas Garrety Saw Mr Jetting into the Cab at the corner of Garden St. two or three colored men were with him one had no hat shoes or coat on - saw him get out of the cab. He then went up Garden St. and I did not see any more of him.

Cab-man. on the corner of G. Hambridge St. When Crowd first came up, standing on the corner of G. St. after they got out of the Cab I went up Garden St. with the crowd - Have seen Mr. [illegible] by sight - He had on dark clothes & a hat - cannot swear it was a hat, but think it was - Heard people say take him out of the Cab

ANOTHER RESCUE CASE SENT UP.

Decision in the Case of Robert Morris, the Colored Lawyer.—In the case of Mr Morris, Hon. B. F. Hallett, U S. commissioner, gave his decision in the U. S. court room on Saturday, and stated his views of the case somewhat at length, as follows:—

The evidence, which is wholly uncontradicted, shows that the defendant, who is a counsellor at law, and who in that capacity was acting here in court as the attorney of a party under lawful arrest and in the custody of the officers of the law, combined with a lawless body of men acting together by force and violence to break and resist the laws; and by means of such combination and force, directly and indirectly aided in and carried out the forcible rescue of his client, and enabled him to escape from the process of law.

I am deeply grieved that the duty has been devolved on me of passing a preliminary judgment upon such a case, the first, I believe, that has ever occurred in the profession in this district and commonwealth; and I especially regret that the defendant is the party accused, because I have long taken a personal interest in his success at the bar. I have uniformly extended to him every professional aid and courtesy in my power. His counsel in the defence has suggested that the defendant, on account of caste, has had to contend with great difficulties and prejudices in the profession he has chosen. I think that the suggestion is not well founded. On the contrary, the bearing of the profession and the courts towards him, to the extent of my observation, has always been kind and courteous, but I know of no immunity that he can claim as an individual or as a counsellor at law, from the penalty that attaches to the wilful violation of the laws of the land. He who best knows the law is the more guilty if he wilfully violates it, or incites others to do so. It is the defendant's own act which has brought him into the peril in which he now stands, and which, if committed by the most distinguished member of the bar, or the bench, would produce the same result and the same judgment that are now to follow as the consequences of that act.

The evidence in this case tends to prove a preconcerted resistance to the laws, and a more extended combination to effect the forcible rescue of the party under arrest from the custody of the officers, than has been developed in the preceding examinations.

The defendant, acting as one of the counsel, is shown to have been in the court room conversing with the alleged fugitive, and well knowing the process and the proceedings by which he was held. He knew that delay was given by the commissioner to enable the party in custody to prepare his defence. He left the court room a short time before the rescue. There was a crowd around the door, and another crowd in the street below, between which, signals passed when the moment most favorable to the rescue had arrived. The defendant is found near the court room door, in the midst of the rioters. He is there at the moment when a colored man, as described by Mr Stratton, was standing on the platform of the stairs singing out for the people to come up from below. At about the same instant, we know the fact that another of the rioters was on the steps of the outer door in court square, on the west side, beckoning to the crowd stationed there, who rushed up stairs and joined the rioters who were then assailing the officers and forcing the inner door of the court room. They were pressing in with all their might, and those before were singing out for those behind to press on. The defendant heard and saw all this, and must have known the unlawful purpose of the signals between the rioters, and of the attack upon the officers at the door. He also knew the precise condition of affairs inside the court room which he had so recently left, and while he was standing there with the crowd outside, the most favorable moment for the rescue was seized upon by them. In the midst of the struggle, when the outer door was carried, and the inner nearly forced, Mr Stratton the officer came up the stairs, and the defendant shook his head, and, as one witness testifies, his finger at him. Previous to this, and just before the rush, the defendant was seen walking up the passage way from the court room door, followed by some of the colored men with whom he communicated, and then returned to the court room door. And at this time between forty and fifty colored men were in the passage way and near the door.

Were it reasonable, upon the most liberal construction, to reconcile this knowledge and these acts with the innocence of the defendant, his subsequent conduct renders this conclusion impracticable. The rescue was made while the defendant was there—the rioters pass with the rescued person from the court house, through Court, Howard, Bulfinch and Cambridge streets to Garden street, and there take possession of a cab, into which the rescued party is placed, with two or three other persons, the defendant being one of them. The purpose could only be to aid in the escape; and the acts of the defendant at the court house, and his being found in the cab, connect him with a common unlawful purpose, from the attempt to force the door to the final escape. The rioters change their purpose of using the cab; they cry out "take him out"—a window of the cab is broken in—the defendant, with the fugitive and his aids, come out of the cab, and goes with them up Garden street, into Southac street. There the crowd stopped, the fugitive was carried off, and the defendant was not again seen.

Five witnesses saw him with the fugitive in the cab, and in the midst of the rescuers. The defendant could not have been there by accident or from curiosity, because he knew the fugitive, knew the rescue, and knew that he was there in the act of escaping from the process of law. The suggestion by his counsel in the defence, that he might have been there for a lawful purpose to consult with his client, is entirely inadmissible. He was aiding in the rescue, had made himself one of the rescuers, and if he added advice and counsel, it could only have been to abet the common purpose of the mob in a violation of the law. Had the defendant appeared here as a witness aiding in bringing to justice those who have committed this outrage upon the public peace, the sanctity of courts of justice and the supremacy of the laws, that argument might have been effective. Standing as he does and upon this evidence, there can be but one conclusion to this examination. The defendant must be held for trial.

The Hon. Josiah Quincy, Jr., now became bail in $2000 for the appearance of Mr Morris in the U. S. district court.

B. H. Bailey
John Federhan
Thomas Garrett

21 saw him get into the Cab. He remained in the C. abt. a minute. (H) saw a window broken.